

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

NORMAN BROWN, et al,)
)
 Plaintiffs,)
)
 vs.) Case No. 17-CV-4082
)
ANNE L. PRECYTHE, et)
al,)
)
 Defendants.)

CONFIDENTIAL DEPOSITION OF GARY DUSENBERG,
produced, sworn and examined on the 21st day of
December, 2017, between the hours of ten o'clock in the
forenoon and six o'clock in the afternoon of that day,
at the offices of Missouri Attorney General's Office,
Broadway State Office Building, Jefferson City,
Missouri, before Kim D. Murphy, Certified Court
Reporter, within and for the State of Missouri.

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18 Court Reporter:
Kim D. Murphy, CCR

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1 IT IS HEREBY STIPULATED AND AGREED, by and
2 between counsel for the Plaintiffs and counsel for the
3 Defendants that this deposition may be taken in
4 shorthand by Kim D. Murphy, CCR, and afterwards
5 transcribed into typewriting; and the signature of the
6 witness is expressly reserved.

7 * * * * *

8 GARY DUSENBERG,
9 of lawful age, produced, sworn and examined on behalf
10 of the Plaintiffs, deposes and says:

11 MS. JONES: I'm Denyse Jones for the
12 Plaintiffs with Husch Blackwell.

13 MS. BREIHAN: Amy Breihan with MacArthur
14 Justice Center for the Plaintiffs.

15 MR. SPILLANE: Mike Spillane from the
16 Attorney General's Office for the Defendants.

17 DIRECT EXAMINATION

18 QUESTIONS BY MS. JONES:

19 Q. Please state your name.

20 A. **Gary Dusenberg.**

21 Q. And what is your title?

22 A. **I'm a member of the Missouri Probation and**
23 **Parole Board.**

24 Q. Have you ever been deposed before?

25 A. **Yes.**

1 Q. So you know that we need to have words for
2 our answers so the court reporter can capture that.

3 **A. Correct.**

4 Q. And that we are not going to speak over
5 each other so that she can get a complete and accurate
6 record today, correct?

7 **A. Correct.**

8 Q. Is there any reason why you're not able to
9 testify fully and honestly today?

10 **A. No.**

11 Q. What did you do to prepare for the
12 deposition today?

13 **A. I just heard about that I had to be here,
14 and I looked over a few of the documents involving the
15 case to kind of refresh my memory.**

16 Q. Okay. Did you review the complaint?

17 **A. The complaint?**

18 Q. Yeah, the lawsuit that we filed?

19 **A. No.**

20 Q. Okay.

21 **A. I didn't read it word for word, but I read
22 it generally.**

23 Q. About how much time did you spend
24 preparing?

25 **A. Not even a half hour probably.**

1 Q. Have you been following the case since it
2 was filed?

3 A. **Not really.**

4 Q. What's your date of birth?

5 A. **7-5-1946.**

6 Q. And what city do you reside in?

7 A. **Blue Springs, Missouri.**

8 Q. Are you married?

9 A. **Yes.**

10 Q. What's your wife's name?

11 A. **Donna.**

12 Q. And what does she do for a living?

13 A. **She's retired.**

14 Q. Have you ever been sued before?

15 A. **No.**

16 Q. Okay. Where did you go to high school?

17 A. **Warren County R-III High School in**
18 **Warrenton, Missouri.**

19 Q. When did you graduate?

20 A. **1964.**

21 Q. Did you go to college?

22 A. **Yes.**

23 Q. Where did you go to college?

24 A. **I went to -- I have a master's degree at**
25 **UMKC and a bachelor's degree at Central Missouri**

1 **University.**

2 Q. When did you get your master's degree?

3 A. Late '70s. I'd say about '78 or '79. I'm
4 not sure about the exact date.

5 Q. And what was that degree in?

6 A. Criminal justice administration.

7 Q. Do you remember any of the coursework you
8 completed?

9 A. To be honest with you, no. Not by name.

10 Q. Fair enough.

11 Did it have any psychology classes
12 involved?

13 A. I think there was one psychology class, but
14 don't hold me to that.

15 Q. Okay. Anything dealing with adolescent or
16 child psychology?

17 A. Not that I recall.

18 Q. Okay. Have you had any further training in
19 the criminal justice area since you completed your
20 master's degree?

21 A. Other than my experience on the Highway
22 Patrol.

23 Q. Can you tell us a little bit about that.

24 A. I sent 30 years on the Highway -- 26 years
25 and retired 30 years service on the Highway Patrol

1 **working out in the field in various positions.**

2 Q. And when did you retire?

3 A. **From the Highway Patrol?**

4 Q. Yeah.

5 A. **1998.**

6 Q. And what were your responsibilities at the
7 Highway Patrol?

8 A. Well, I was a road officer. At the end of
9 my career, I was a supervisor in the gaming division in
10 Riverside, Missouri.

11 The last four and a half, five years, I
12 spent in the gaming division.

13 Q. Did you have additional training in the
14 criminal justice area while you were at the Missouri
15 Highway Patrol?

16 A. Lots of different courses and programs.
17 Probably too numerous to mention --

18 Q. Okay.

19 A. -- through the years.

20 Q. Okay. Have you served any time in the
21 military?

22 A. Yes, ma'am.

23 Q. Can you tell us about that.

24 A. I spent 3 years, 11 months and 19 days in
25 the United States Marine Corps in Vietnam. Served two

1 terms in Vietnam; had various positions at bases in the
2 United States.

3 Q. And when did you complete your service?

4 A. November 20th, 1969.

5 Q. What did you do upon completion of your
6 military service?

7 A. What did I do upon completion of my
8 military service? I came back and -- back home. I was
9 first in California. I was going to go to the Los
10 Angeles Police Department at the academy.

11 Decided to come back home. And home for a
12 while, went to Virginia and worked for the federal
13 government out there as a GSA until I was accepted to
14 the Missouri Highway Patrol, and then I came back here.

15 And also worked at Avis Rent a Car for a
16 while in Washington D.C.

17 Q. So when you retired from the Highway Patrol
18 office, did you do anything else?

19 A. Well, yeah. I was a manager of an A & W
20 Drive-In in Kirksville for a short period of time,
21 about a year. Then I went to Virginia.

22 Q. Okay. So you're talking about
23 before the --

24 A. Before the Highway Patrol.

25 Q. Okay. All right.

1 **A. Yes, ma'am.**

2 **Q. So after the Highway Patrol, what year did**
3 **you retire?**

4 **A. 1998. For two years -- for about**
5 **approximately two years I was retired. Then I was**
6 **elected to the Missouri House of Representatives. And**
7 **I served eight years there.**

8 **Q. So that brings us to 2010?**

9 **A. Yes.**

10 **Q. Okay.**

11 **A. That was my last year there. I was elected**
12 **in 2002. And I was out because of term limits.**

13 **Q. Were you involved in any committees while**
14 **you were in that office involving the Department of**
15 **Corrections or criminal justice?**

16 **A. No. I was the chairman of Homeland**
17 **Security, which really would be the closest thing to**
18 **Department of Justice, I guess.**

19 **Q. And how long were you chairman of Homeland**
20 **Security?**

21 **A. Either two or four years. I'm not certain.**
22 **At least two.**

23 **Q. Did you run for any other office after you**
24 **termed out of that?**

25 **A. I ran for Missouri Senate, and I lost a**

1 **three-way race, primary.**

2 Q. So have you been retired full-time since
3 2010?

4 A. I'm sorry?

5 Q. Have you been retired full-time since that
6 point in time?

7 A. I did some -- in between that, being
8 appointed to the board, I did some drug testing for a
9 firm out of Kansas City for the -- with the colleges
10 and the Kansas City Chiefs.

11 Q. When you say "drug testing, can you
12 explain what you --

13 A. We would go like to the Kansas City Chiefs
14 and do random drug tests on the players, urinalysis,
15 urine tests, basically. And I also did several
16 colleges in the central part of the United States. I
17 was trying to think of the name of the company that I
18 worked for, and I can't think of it.

19 Q. Okay.

20 A. But if it comes to me, I'll tell you.

21 Q. You said you did that for how long?

22 A. Drug-Free Sports is the company.

23 Q. Okay.

24 A. Approximately two years, part-time.

25 Q. And when did you stop doing that?

1 A. When I was appointed to Probation and
2 Parole, which was two years and 26 days ago.

3 Q. So how did you become interested in that
4 position on the Board of Probation and Parole?

5 A. Well, I've always -- was interested in the
6 criminal justice system. I always kind of wanted to
7 see how the other side worked. You know, I did
8 enforcement for 30 years, almost 30 years. Actually,
9 26 years and 8 months. I retired with 30 years of
10 service.

11 Q. So is this an appointment that you sought
12 out prior to 2015 or 2014?

13 A. I don't know when I first -- I don't
14 think -- I don't think I submitted my application to
15 the Governor's office. I can't answer that for sure.
16 I don't think I submitted -- what is it, 2000- --
17 probably three years ago I submitted my application.
18 Three or four years ago.

19 Q. And your interest in criminal justice is
20 what prompted you to do that?

21 A. Correct.

22 Q. Did you feel like you possessed a certain
23 skill set that would make you a good board member?

24 A. I think that time on the Highway Patrol is
25 a lot -- the main reason. I've always had an interest

1 in public service is the main reason. Throughout my
2 life, you can see from my record.

3 Q. So are there certain skill sets that you
4 think you use in this position on the board that you
5 acquired from the Highway Patrol?

6 A. How to deal with individuals and interview
7 and talk to individuals. I did a lot of interviewing.
8 Both my time on the road, obviously, my time at the
9 gaming commission.

10 Q. Any other skill set you think transferred?

11 A. Just my -- like I said, my willingness to
12 be a public servant. I think it's important.

13 Q. Can you walk us through the appointment
14 process?

15 A. From?

16 Q. From the point --

17 A. Well, I made an application. I put my
18 application in -- I'm going to say it was
19 probably -- it was probably six years ago the first
20 time I applied; four years prior to being appointed.
21 Approximately. I'm not sure about those dates.

22 Q. So let me follow up. So you applied before
23 and didn't get the appointment?

24 A. Well, I don't know how that works. I mean,
25 everybody, they apply. I mean, I know I wasn't

1 interviewed until I got it. I was never interviewed
2 though for it.

3 Q. So you said you first applied about six
4 years ago?

5 A. I think, approximately. I've been on there
6 2 years and 26 days. And I'm thinking three to four
7 years prior to that, that I first applied.

8 Q. Was it for a specific vacancy at the time
9 that you applied?

10 A. Well, there might have been a vacancy. I'm
11 not sure if there was.

12 Q. Okay. So you don't know?

13 A. It was on file. You can always put your
14 application on file should a vacancy come up.

15 Q. So it's not as if you were going for a
16 specific vacancy --

17 A. No.

18 Q. -- when you filed it?

19 A. No.

20 Q. You just put in your application and when a
21 vacancy became opened, that's when you were considered?

22 A. Right. Right. Yes, ma'am.

23 Q. So you were appointed by Governor Nixon?

24 A. Correct.

25 Q. Do you remember the date?

1 A. November 25th, 2015.

2 Q. And when did you start formally?

3 A. December 9th of 2015, but I was appointed
4 on the 25th of November.

5 Q. What are your duties in this position?

6 A. Well, obviously we go from institution to
7 institution and hold parole hearings or conditional
8 release hearings. Interview offenders. And make a
9 decision as to a release date for them. Either prior
10 to their CR date, their conditional release date, or
11 after conditional release date, which we have to
12 let them -- that's the longest we can hold them should
13 we choose to do so.

14 Otherwise, they can be paroled before that
15 date obviously, but oftentimes if they have
16 institutional problems, it -- all depends upon each
17 case. They're all different.

18 Q. When you say "interview offenders," are you
19 referring to the parole hearings or something other
20 than parole hearings?

21 A. No, the parole hearings.

22 Q. Do you have any other duties in this
23 position?

24 A. For the most part, no. I mean, that's
25 generally our job.

1 Q. Well --

2 A. We review other additional files in other
3 cases that other parole members here -- not all of
4 them, but a good percentage of them.

5 Q. Okay.

6 A. Some of them can be completed that day,
7 depending upon the dates involved and things of that
8 nature. It doesn't have to be reviewed by the whole
9 board.

10 Q. So do you review files that you don't
11 either sit on the hearing for or vote on?

12 A. After the hearing, I could review some. It
13 requires a full board to hear it.

14 Q. Okay.

15 A. Prior to the hearing, I never see those
16 files. Rarely. Rarely do I ever see those files until
17 that day.

18 Q. So I'm just trying to get an understanding
19 of the universe of files that you would review. It
20 would either be in connection with the hearing that
21 you're going to be conducting or voting?

22 A. Correct, when it's been heard --

23 Q. Okay.

24 A. -- already, correct. By some other member.

25 Q. But it's not as if you review all parole

1 files?

2 A. No. We review the majority of them though.
3 Some of them can be settled that day, depending upon
4 the dates and things of that nature.

5 Q. And when you talk about some require the
6 full board to vote on, do you have an idea of what
7 percentage that would be?

8 A. Not really. But I'm gonna guess -- I've
9 never been asked that question before. Probably
10 75 percent of them. That's a guess on my part.

11 Q. Let's back up. Do you have a sense of how
12 many parole hearings there are annually? And you could
13 ballpark it.

14 A. No, I never really thought about that
15 before. But I'd say there's 15- -- between all -- for
16 the whole board?

17 Q. Yeah.

18 A. I'd say 15- to 20,000 hearings, I guess.
19 I'm guessing around 15,000.

20 Q. And you think --

21 A. Probably a hundred a month. Yeah, I'm
22 guessing around 15,000.

23 Q. Okay.

24 A. That's my guess. I don't know.

25 Q. I understand -- I understand it's just your

1 guess.

2 And do you think about 75 percent of 15,000
3 require a full board?

4 **A. That's a guess on my part, too, yes, ma'am.**

5 Q. Would you say it's definitely more than
6 half of them that require a full board?

7 **A. Yes, ma'am.**

8 Q. Okay. And what circumstances would warrant
9 a full board vote?

10 **A. Well, any violent crimes, and any parole**
11 **violinator. Those are the two most prominent ones.**
12 **Anybody that comes back as a parole violinator, it has to**
13 **go back to the full board.**

14 Q. So this would be a scenario where someone
15 is trying to get paroled out again, but has a history
16 of violations?

17 **A. Correct. And that doesn't necessarily have**
18 **to be violent crimes, parole violinators.**

19 Q. Are there any other circumstances
20 warranting a full board vote other than those two?

21 **A. There probably is, but I can't tell you off**
22 **the top of my head. We deal with a lot of different**
23 **cases. A lot of times it depends upon the time frame**
24 **involved.**

25 Q. And when you talk about a majority of the

1 board, what are you referring to? Majority of the
2 board versus a full board?

3 A. It has to be four. It has to be at least
4 four, because the board consists of seven members. The
5 majority would be four, majority vote.

6 Q. Okay. So all seven board members would
7 vote. It takes four to make a decision?

8 A. Yes, ma'am. Actually, we only have six
9 board members right now, but it still takes four. If
10 there's any ties, it goes to the board chairman. He's
11 one of the six right now. Six total.

12 Q. So when you say "any ties" -- so does the
13 board chairman vote twice?

14 A. No. We have five plus the chairman right
15 now on the board.

16 Q. Okay.

17 A. So it has to be the majority.

18 Q. Four of the five have to vote?

19 A. The majority of the board, yeah, right.

20 Q. The majority of the positions regardless of
21 the vacancies?

22 A. Correct.

23 Q. So just to tie that off, there's only
24 two --

25 A. If there's any ties, the chairman has to

1 break them. 'Cause some people -- you could actually
2 abstain. There's reasons for board members abstaining
3 if they have a -- you know, if they know the person
4 involved on a personal basis or -- I mean, there's some
5 abstentions along the way.

6 Q. Okay. But it would seem like in that
7 scenario, you're not going to get to the majority of
8 four, right, to make a decision. If you have five and
9 there's a tie, there's only two.

10 A. You lost me now.

11 Q. Well, you know, this is just trying to
12 understand the circumstances under which the chair
13 would need to vote. In this scenario --

14 A. The chair breaks any ties.

15 Q. Okay.

16 A. I'll leave it at that.

17 Q. Okay. But it still needs to be a total of
18 four votes in order for --

19 A. I don't disagree with that. Right.

20 Q. Okay. So you said that your
21 responsibilities primarily, but not exclusively, are
22 related to parole hearings and voting on parole, you
23 know --

24 A. Primarily, yes, ma'am.

25 Q. In when you say "primarily," what -- give

1 me a percentage of your time that you spend on those
2 activities.

3 A. Ninety percent probably. That's a good
4 percentage of the majority of it.

5 Q. How much of your time is administrative or
6 training type activities?

7 A. Well, we have training throughout the year.
8 And I never really thought -- probably -- at least the
9 other ten percent of that would probably be training
10 I'd say.

11 Q. Okay.

12 A. We had training online quite a bit. And
13 like last year, I went to Colorado for their academy,
14 to spend a week there. I think it was last year or the
15 year before last.

16 Q. Okay. And we'll walk through your training
17 in a minute.

18 So 90 percent of your time is either doing
19 parole hearings or --

20 A. That's a guess on my part.

21 Q. I understand. I just want to make sure
22 we're on the same page here today.

23 A. We're pretty busy, I'll put it that way.

24 Q. So about how many parole hearings are held
25 in a day?

1 A. How many are held in a day? That varies
2 from institution to institution. We don't hear every
3 institution every day. I think some days -- on -- from
4 one individual, or for the whole board?

5 Q. Well, for you?

6 A. On average?

7 Q. Uh-huh.

8 A. Probably 10 or 12. Twelve probably is a
9 good average. I'm guessing. Sometimes we'll have six.
10 Sometimes we could have 14. Depends upon the
11 institution we're at.

12 Q. And what causes that variability?

13 A. The institution. That's the way the
14 schedule's set up. I get a schedule, where I'm
15 supposed to be, when I'm supposed to be there and the
16 number of hearings and --

17 Q. So --

18 A. That -- that -- I'm not exactly sure how
19 they set that up, but it comes from the institution
20 when those folks are available.

21 Q. So does that mean if it's a day where
22 there's six hearings, that there's more downtime,
23 because they're not scheduling as many?

24 A. What do you mean by "downtime?"

25 Q. So I envision a few different scenarios as

1 to why you would only have six is, on average, you get
2 half up to 12.

3 **A. Uh-huh.**

4 Q. Is it the length of any given hearing may
5 be longer?

6 **A. That could be.**

7 Q. Or is it because they're not just
8 scheduling that many? You know, so maybe you get done
9 earlier when you go to a specific institution because
10 they're not scheduling as many?

11 **A. They're not scheduling as many. Whatever**
12 **they schedule, we do.**

13 Q. Is there an average time period that a
14 particular hearing lasts?

15 **A. It generally depends upon the case. But**
16 **I'd say most -- generally 20 minutes -- at least**
17 **20 minutes to a half hour, or sometimes longer.**

18 Q. So walk me through a day, generally
19 speaking, where you're hearing parole hearings. If the
20 hearings are lasting 20 minutes to an hour, let's say,
21 are you having time in between to review records before
22 or after?

23 **A. What happens is that, when we go to the**
24 **institution, if I'm the board member, I would sit in**
25 **the middle and the analyst sits to the left or right**

1 and then somebody at the institution would be on the
2 board, district administrator, generally. Could be
3 somebody else, but most generally it's the district
4 administrator of the institution.

5 And if we've got eight hearings, I've not
6 seen those files before until the analyst takes them
7 out of their briefcase, okay.

8 There's one rarity that I can remember
9 where I saw the file, because I had some questions
10 about it, and I'd never run into it before. And that's
11 the only one I can remember personally.

12 Q. Uh-huh.

13 A. But I do not see those files until they're
14 brought out on the table that day. And then whoever's
15 at the institution decides who's going to hear -- they
16 usually have it set up as to who's going to hear
17 what -- what -- it's usually alphabetically to tell you
18 truth.

19 Q. Uh-huh.

20 A. And she or he passes them out. And we go
21 from there. We take about 20 minutes, whatever time
22 you want, whatever time you feel is necessary, to
23 review your first case. And then go from there.

24 And then usually while you're -- like, if
25 would do the first case, the analyst, whoever's next,

1 would be reviewing their case while we're talking with
2 the offender.

3 Q. Okay. You lost me a little bit.

4 So do you-all act as a panel?

5 A. Yes, ma'am.

6 Q. So when you say if you reviewed one, then
7 the analyst could be reviewing the next one?

8 A. Usually, they are -- they could have --
9 they could have -- usually somebody at the institution
10 could have done their first -- read their first case
11 beforehand to kind of get a jump on things.

12 Q. Okay. So are you referring -- wait, you
13 have the files in front of you; when you get done, then
14 you literally give it to the next person --

15 A. No.

16 Q. -- so they can review the file?

17 A. No. If I have a file --

18 Q. Uh-huh.

19 A. -- I'm assigned a file, it's usually going
20 to have -- alphabetical order at the institution,
21 whoever's over at the institution. We take the files
22 that -- "we" being myself and the analyst have the
23 files. Obviously they have a copy at the institution
24 already. But we take the files with us to the
25 institution. Okay. "We" being the analyst, myself --

1 I always have an analyst with me.

2 Q. Uh-huh.

3 A. And then the -- usually the person at the
4 institution has it set up alphabetically. Not always.
5 It could be different -- reasons to change that. But
6 usually we review those alphabetically. And she'll
7 say, like, "Mr. Dusenberg, you have Alford. And, Mr.
8 Jones, you have what the next one is." Not always
9 though.

10 Q. So what does being assigned a file mean?

11 A. Being assigned a file?

12 Q. Uh-huh.

13 A. That's yours to review at the hearing.

14 Q. But does the hearing occur as a panel, as
15 opposed --

16 A. Yes.

17 Q. -- to you individually, right?

18 A. No. I mean, the -- I would do the main
19 questioning in the interview. And at that time, the
20 other two parties could either jump in with questions
21 or comments or they could wait till the end of the
22 interview to ask questions.

23 Q. So what you're saying is that there's a
24 lead person --

25 A. Correct.

1 Q. -- per hearing, and that lead person
2 reviews the file first?

3 A. Right.

4 Q. Okay.

5 A. They're responsible for the interview,
6 basically.

7 Q. But when the interview is happening,
8 you-all are doing it as a panel?

9 A. You're usually working and listening and
10 studying what's being said at that hearing, and you're
11 working on the next file that you may have.

12 Q. Okay.

13 A. Does that make sense?

14 Q. Yes.

15 A. Okay.

16 Q. Okay. So I'm still trying to walk through
17 what a typical day is like when you're having parole
18 hearings. You have to travel occasionally, correct?

19 A. Yes, ma'am.

20 Q. All right. So does the travel occur the
21 day of a set of hearings or do you --

22 A. It depends upon where the institution is.
23 Usually if we have to go down to Charleston or
24 Farmington, it's an overnight --

25 Q. Uh-huh.

1 A. -- trip. Or if we go to St. Joe, up in
2 that area, it might be more than one institution.
3 Cameron and St. Joe, we'll stay overnight and do
4 hearings the next day at one of those -- at another
5 institution.

6 Q. Okay.

7 A. That's the only main travel you do. Years
8 ago they did a lot of traveling. Now we have video
9 hearings, so --

10 Q. Okay.

11 A. -- travel is not as extent -- as long.

12 Q. And about what time does the day conclude?

13 A. Depends upon the length of the hearings.

14 Q. Is there, like, an average ending time at
15 5:00 or --

16 A. I'd say we get done by -- average? 3:30,
17 4:00 --

18 Q. Okay.

19 A. -- approximately.

20 Q. It's not like you're having hearings at 7
21 o'clock?

22 A. No, ma'am.

23 Q. And on those days that you are traveling,
24 do you drive back after you finish the day of hearings?

25 A. If it's drivable distance or we stay over.

1 Q. Okay.

2 A. Yes, ma'am.

3 Q. So how many days in a month are you
4 conducting hearings?

5 A. Myself, individually?

6 Q. Or you're participating on a hearing -- on
7 a panel?

8 A. Probably on average, 20 days of the month.
9 Four to five days a week. Sometimes we don't have them
10 on Friday. Sometimes we do.

11 Q. Is there a particular reason why you would
12 not have hearings on a given day?

13 A. Some --

14 Q. Are there, like, training days or --

15 A. Training days. And then some of the
16 institutions have visitors' day, which is usually on a
17 Friday. That's why we don't have as many on Fridays.

18 Q. Uh-huh.

19 A. However, we do have them on Fridays, but
20 that's the main reason we would not, because of
21 visitation day.

22 Q. And what percentage of your hearings that
23 you are on the panel are in person versus video?

24 A. Well, I never thought about that. It's
25 pretty high on video now. I'd probably say 60, 65

1 percent of them are video now. That's just a guess on
2 my part. I have no idea. Never thought about it.

3 Q. Has that changed since you started in
4 December of '15?

5 A. It's increased -- video hearings have
6 increased, yes.

7 Q. What would you say it was at when you
8 started?

9 A. I can't answer that. I don't know.

10 Q. Do you think it's more than doubled like
11 from -- over the two-year period?

12 A. Video hearings?

13 Q. Yes.

14 A. You know, I don't know for sure. I don't
15 think so. But I don't know for sure. I don't think
16 it's doubled. I know it's increased, but I don't think
17 it's doubled.

18 Q. Okay. Do you know why there's been an
19 increase?

20 A. Well, obviously they've gotten the
21 equipment at some of the institutions that didn't have
22 it before and we were able to do more video hearings is
23 one of the reasons.

24 Q. Can you think of any others?

25 A. I think initially whenever video hearings

1 came about, it's my understanding it was to save money
2 for the state, the traveling, things of that nature.

3 Q. Do you know when they started video
4 hearings?

5 A. No, ma'am.

6 Q. Is there a difference in the hearing that's
7 in person versus video?

8 A. I personally don't think so. I mean, I
9 feel like I'm in the room with the individual.
10 Hopefully they feel the same way. And obviously
11 there's a difference, in the fact that it is a video
12 hearing, but as far as the person-to-person thing, I
13 don't think so.

14 Q. You don't feel like you're missing anything
15 by doing it --

16 A. I personally don't. I think maybe -- I
17 can't speak for the other board members.

18 Q. So when you do a video panel, are just the
19 panel members in the room? Like, so how is that set
20 up?

21 A. Well, if we were doing them like at --
22 well, for example, if we were doing them at
23 Chillicothe, which is the ladies' prison, the district
24 administrator would be there at the prison. She would
25 be the third member of the panel. Then myself and an

1 analyst assigned to me for that week would be at the --
2 in the hearing room at Jefferson City at our office.

3 Q. Okay.

4 A. That would be the three of us.

5 Q. Okay. Do -- and I'm jumping a little out
6 of order.

7 A. That's all right.

8 Q. And I apologize, so there may be some
9 duplications, but do the panel members speak to each
10 other or have any discussion about an inmate prior to
11 the hearing?

12 A. Well, casual comments. I mean, we don't --
13 you know, like, somebody at the institution may have
14 said, we've had a lot of trouble with this person, you
15 know, or he's -- he or she is a spitter, and they may
16 have a mask on or --

17 Q. Okay.

18 A. -- stuff like that. But we don't talk
19 about -- I don't know what your reference is.

20 Q. Is there any substantive comments or
21 conversation about things that you might notice in a
22 file or somebody who's reviewing a file might say, oh,
23 this is his history or this is -- I don't know. These
24 are the findings that the IPO made. Like, is there any
25 substantive conversation about --

1 **A. The person itself? The --**

2 Q. Yes.

3 **A. -- offender itself?**

4 Q. Correct.

5 **A. Not normally.**

6 Q. Okay.

7 **A. Unless, like I said, some of those**
8 **instances where they're known to spit on people or --**

9 Q. Uh-huh.

10 **A. For safety reasons, they may let us know at**
11 **the institution. Or just general stuff like that. Or**
12 **this guy might be a lot of problem, because he's in**
13 **ad-seg, administrative segregation or -- just for your**
14 **information.**

15 Q. So do you have any -- I guess let me back
16 up.

17 So the panel members are not all in the
18 same room. Is there any --

19 **A. At the video hearings?**

20 Q. Yes.

21 **A. Correct.**

22 Q. Correct.

23 Do you feel like there's anything lost by
24 not having all the panel members in the same room?

25 **A. Me, personally, no. I can't speak for**

1 every board member.

2 Q. Okay. Have you heard any complaints about
3 that?

4 A. I think some of the analysts that's been
5 around for years, to be honest with you, feel like they
6 would rather hear them in person.

7 Q. Okay.

8 A. But that's my -- that's what I grasp from
9 what they say.

10 Q. Can you think of anything specifically that
11 was said that made you think that?

12 A. They just like -- some of them have been
13 doing it for 20-some years. The analyst, they've been
14 around a long time.

15 To be honest with you, I think they like to
16 travel to the institution and see the people in person,
17 but -- that's the only complaints I've heard about it.
18 If you want to call it a complaint. It's just talking
19 in passing. You know, office talk.

20 Q. Do video hearings allow you to hear more in
21 a given day, or there's no difference regardless of
22 video?

23 A. No, whatever is assigned is assigned for
24 that day, no matter what.

25 Q. Who makes a decision whether or not a

1 hearing will be via video or in person? Is it the
2 institution or is it the inmate?

3 A. If they have -- if they have the facilities
4 and the equipment to do the video, most of them will do
5 it, because they have the equipment there. I mean,
6 it's a given that -- it's usually a given. Sometimes
7 we have to travel there; if an offender will not waiver
8 a video hearing, we have to go there in person.

9 They have that right, the way the law is
10 set up right now, to not do a video hearing. So we
11 have to go there in person. Most of the -- the
12 majority of them -- I don't know the percentage -- but
13 the majority of them waiver the hearing and do the
14 video. But you always have a few that do not.

15 Q. So when they -- when an inmate makes a
16 petition for a hearing, at what point do they say, I
17 want it to be in person or I waive that right?

18 A. You know, I really don't know to tell you
19 the truth. That's done at the institution. When they
20 waiver the hearings, I can't -- I can't answer that.

21 Q. Okay. Do you have -- or does the hearing
22 panel have any indication whether or not, oh, well,
23 we're here because this inmate wouldn't waive the
24 video?

25 A. Well, I would learn that from an analyst.

1 **They would be the first ones to find out probably.**

2 **Whether they would be the first ones. We're going down**
3 **there or wherever, because they didn't waiver.**

4 Q. Okay. And so then I would imagine if
5 you're going down because someone didn't waive that
6 right, then all the hearings for that day would be in
7 person, because you're going to be down there anyway?

8 A. **Correct, correct.**

9 Q. Is that viewed negatively, if an inmate --

10 A. **No. That's their right to do that. That's**
11 **part of the job. They have the right to waiver, and we**
12 **accept that.**

13 Q. Okay.

14 A. **Or not waiver.**

15 Q. And, again, you're saying you have no role
16 in --

17 A. **There's no hostility over it --**

18 Q. Okay.

19 A. **-- that they did that, if that's what**
20 **you're asking me. I personally think the law needs to**
21 **be changed, but that's me personally.**

22 Q. Be changed to all video?

23 A. **To where they can't waiver, yeah.**

24 Q. So you're saying you think the law should
25 be that they all have to be via video?

1 A. Well, the way the law is set up, I just --

2 Q. Why?

3 A. Well, for one thing, expense, what we just
4 talked about, to go someplace. We've done -- I've gone
5 to hear one person and -- drive to Farmington to hear
6 one person and drive back.

7 Q. Uh-huh. That's the reason why you think
8 they should all be via video?

9 A. That's not the main reason, but that is a
10 reason. I mean --

11 Q. So what's --

12 A. I think you're wasting the panel's time and
13 doing a lot of other hearings someplace else possibly
14 on that day than driving clear to Farmington or
15 Sikeston, anyplace down south there in the bootheel,
16 and having a hearing for one person, you know.

17 Q. So how --

18 A. But I accept it. I mean, I think that's
19 the way the law is. But if it was me, we do it.

20 Q. So how often does it happen where you're
21 going to a facility just to hear one hearing?

22 A. Not that often. I can't give you -- I
23 don't know a number.

24 Q. Is it a handful a year? Or a handful a
25 month?

1 A. A handful a year. Not that many of them.

2 Q. So we were talking about what a typical day
3 looks like when you're having a hearing. Do you
4 typically do voting on the days that you are hearing --

5 A. We do the voting immediately after the
6 hearing. As soon as the defendant leaves the room, we
7 talk about and discuss it. And everybody discusses the
8 matter. And we come up with a date. And we feel -- we
9 all talk about it in detail as to why we feel the way
10 we do. And we don't have to -- we don't have to agree
11 on the same date. We can split it. That's one of
12 those that would go to the full board. And that
13 happens.

14 Q. But isn't it true, and correct me if I'm
15 wrong, that the -- only board members vote on whether
16 or not to release?

17 A. The person at the -- right, at the end. In
18 the end, the scenario you're talking about, only the
19 board members, yes.

20 Q. Okay. So --

21 A. But they may agree with the -- excuse me, I
22 don't mean to interrupt you.

23 Q. Go ahead.

24 A. They may -- the other board members may
25 agree with the analyst and the person at the

1 institution rather than agree with me.

2 Q. Okay.

3 A. I mean, that's when they have to read the
4 file and come up with their date.

5 Q. Okay.

6 A. I mean, everybody has their reasons on
7 their dates.

8 Q. I'm trying to get an idea of the timing of
9 this. So the panel votes and then other board members
10 have to vote as to whether or not -- when does that
11 second voting piece happen? When the other board
12 members, who are not on the panel, vote?

13 A. The files are taken back to the office by
14 the analyst from that institution that we left that
15 day. And they put them in their perspective -- where
16 they need to go. If they need to go to the next member
17 of the board, they put them -- they put them on the
18 next member of the board's shelf, if it's a split.

19 Q. Okay. So --

20 A. Or it could be for anything.

21 Q. How do they decide who's voting on what?
22 Right? So let's say you did -- heard a hearing from
23 Mr. Smith today.

24 A. Yes.

25 Q. And you need at least two other board

1 members to vote on that, correct?

2 A. Correct. So the file goes back to the
3 office from the institution with us. Myself and the
4 analyst, we hand carry it back to the office.

5 Q. Uh-huh.

6 A. And the analyst takes it. I don't --
7 usually I'm done with it then. And the analyst takes
8 it. There's a rotation of board members.

9 Q. Uh-huh.

10 A. And the next board member -- now it's going
11 west. I call it west, but we split it every six
12 months. It goes opposite directions towards what --
13 the ones that have to be reviewed.

14 So right now mine goes to the board member
15 Fitzwater. It goes to the left. And in January,
16 they'll switch, and it will go to the right. My
17 hearings will go to the right.

18 Q. So --

19 A. And it also applies to them also.

20 Q. So that typically the same couple -- the
21 same additional board members are voting on the
22 hearings you conducted?

23 A. Well, the first one now, Mr. Fitzwater,
24 votes first.

25 Q. Okay.

1 **A. Or the ones I've done since he came. He**
2 **hasn't been there very long. Four months maybe.**

3 Q. So you're saying that there's a rotation,
4 right?

5 **A. Yes, ma'am.**

6 Q. So they bring the files back, and then
7 whoever is to the west of you, would vote?

8 **A. Uh-huh.**

9 Q. So is that in every situation for that
10 six-month period that that's the rotation? That all
11 the ones that you hear go to the west?

12 **A. Correct.**

13 Q. So we --

14 **A. For six months. And then they switch them**
15 **to the next -- to the right.**

16 Q. Okay.

17 **A. East.**

18 Q. Understood.

19 I guess I was just trying to get a sense --

20 **A. Everybody has their own shelf. Each board**
21 **member has their own shelf.**

22 Q. Okay.

23 **A. And the analyst places the files on their**
24 **shelves.**

25 Q. Okay. So you-all kind of vote together as

1 a block then, right? I mean, as a group, because of
2 the rotation. So for six months --

3 A. Well, when they -- I don't know what you
4 mean by a group.

5 Q. Well, not together. But, like, the board
6 voting members on a given file are the same --

7 A. Uh-huh. Yes, ma'am.

8 Q. -- because of how the rotation is. It's
9 not around --

10 A. For six months.

11 Q. Correct.

12 A. Yeah.

13 Q. Okay.

14 A. That's the way they do it now.

15 Q. Okay.

16 A. Since I've been there.

17 Q. Okay. And is the rotation, like, in order
18 of seniority or --

19 A. No -- you know, I can't answer that. I
20 never thought about -- I don't think so.

21 Q. So it's not as if in 2018 or 2019 the
22 rotation could be --

23 A. No.

24 Q. -- somehow different? If those two people
25 to your west and to your east are still there, then it

1 will be those people again year over year?

2 A. It may not. It may not be the same.

3 Q. So do you know -- so you don't know --

4 A. It switches every six months. I told you
5 that.

6 Q. Correct. But then at some point it will be
7 back to where it was, right?

8 A. Right, correct.

9 Q. All right.

10 A. After six months.

11 Q. Okay.

12 A. Uh-huh.

13 Q. And so I guess my question would be; those
14 would be the same people --

15 A. Correct.

16 Q. -- that you'd be voting with?

17 A. Right.

18 Q. Okay.

19 A. Normally -- I mean, unless something
20 happens that they switch the shelves around. That's
21 the way it is now.

22 Q. So who are the two to your west now?

23 A. Mr. Fitzwater and Ms. Zamkus. Then on
24 further down is Mr. Rucker.

25 Q. Well, hold on. So --

1 **A. My files go --**

2 **Q. In this current scenario, the two to your**
3 **west would be Fitzwater --**

4 **A. It could go that far down.**

5 **Q. I mean, if it's a full board, right?**

6 **A. Correct.**

7 **Q. If it's not the full board, it would be**
8 **Fitzwater and Zamkus?**

9 **A. Zamkus.**

10 **Q. Zamkus. Okay. Okay. And then who are the**
11 **two on your east?**

12 **A. You got me thinking now.**

13 **Mr. Wells is the only one on my east right**
14 **now, because -- and the chairman has a shelf on down,**
15 **the last shelf. But he may not see any of those -- he**
16 **may not see any of them. Just the ones that he has to**
17 **vote on goes on his shelf, the chairman.**

18 **Q. And so when does -- the six-month period,**
19 **is it like January to June 30th?**

20 **A. I think that's -- I think it changes on**
21 **January 6th or it changes on January 1st.**

22 **Q. Okay.**

23 **A. We change some arrows up the top of the**
24 **bookcases --**

25 **Q. Okay.**

1 A. -- so we know what direction we're going.

2 Q. So do you have any communication or contact
3 with those other two board members who are voting on
4 the file after the hearing?

5 A. Not normally. I mean, sometimes they --
6 you know, if there's a date that might have been -- one
7 of them picks up that might have been written down
8 wrong, you know, they might bring it back and say, did
9 you mean this date or something; which could be a human
10 error.

11 Q. The rehearing date? When you say the date
12 might be wrong?

13 A. Well, not necessarily a rehearing date.
14 There might not be a rehearing. I mean --

15 Q. Uh-huh.

16 A. I mean, everyone -- humans make errors.

17 Q. Yeah.

18 A. You know.

19 Q. Okay.

20 A. Sometimes a correction -- you see so many
21 numbers; they get transposed.

22 Q. Uh-huh.

23 A. You know, and every once in a while, you'll
24 have -- they'll bring it back -- one may bring it back
25 and say, did you mean this, or did you mean this? You

1 know, that's the one time, usually.

2 Q. Okay. So absent some kind of perceived
3 error on the form, there's not conversation or --

4 A. No. Sometimes, I'll tell you, that we get
5 files back that -- people with violent crimes, that
6 we've given them a release date, and we try to explain
7 to them why we do that. Because normally, I guess the
8 best way to put it, if you looked the case in general,
9 the person would probably think, why are you letting
10 this person out.

11 Q. Uh-huh.

12 A. And if we found a good reason to let them
13 out, sometimes we may hand carry that to the board
14 member. And it doesn't mean they have to vote that
15 way.

16 Q. Uh-huh.

17 A. And tell them why we did what we did. Do
18 you understand what I'm saying?

19 Q. Uh-huh.

20 A. If you have a violent offender and the
21 average person would probably say, why in the world
22 would you ever let this person out of prison, you know,
23 maybe -- not this one. And they -- we'll take it and
24 try to explain it to them why I felt that this person
25 deserved a release date.

1 Q. Is that --

2 A. That's not too often.

3 Q. Okay. Would that not otherwise be
4 documented in the file or?

5 A. Well, if you read -- yeah. Usually there's
6 notes on that, but not always. It kind of adds -- adds
7 a personal touch to it, as to why you voted the way you
8 did or why you decided what you did on very serious --
9 usually very serious violent crimes.

10 Q. Okay.

11 A. You know, it doesn't happen very often, you
12 know.

13 Q. Do folks --

14 A. We do have a heart.

15 Q. Uh-huh.

16 A. Compassion with people.

17 Q. Understood.

18 Are there ever scenarios where that -- that
19 voting member would go to the hearing member and ask
20 questions about a file?

21 A. Yeah, I think, in that instance, what I
22 just told you about.

23 Q. Uh-huh. But that's a rare occasion?

24 A. Right. It doesn't happen too often.

25 Q. Do --

1 **A. I'm just being upfront with you about it.**

2 **I think you want me to be honest, right?**

3 Q. Yes. Yes. I'm just trying to understand
4 how it works.

5 So the voting member, do they have any
6 obligation to review the transcript or the audio of the
7 hearing?

8 **A. Say that again.**

9 Q. So now the files come back and it's going
10 to Fitzwater to vote on.

11 **A. Right.**

12 Q. He wasn't at the hearing. Does he have any
13 obligation to review the hearing, audio, you know, the
14 audio of the hearing or any transcript of the hearing?
15 What does --

16 **A. No, he does not have any -- the audio of**
17 **the -- no. He generally just -- I mean, they can if**
18 **they request it.**

19 Q. Uh-huh.

20 **A. Any of us can. But generally he or she**
21 **just reviews the file, the information in front of**
22 **them. They can request the audio or they can --**

23 Q. Are you aware of any times that the audio
24 was requested?

25 **A. Me, personally? I don't think so, no.**

1 Q. So when they review the file, I guess the
2 file is placed there in their cubbyhole?

3 A. Yeah. Their shelves.

4 Q. Shelves. Sorry. And they review it and
5 then they just make their vote on the form --

6 A. Correct.

7 Q. -- and then put it into the --

8 A. Board action sheet.

9 Q. Yes. And then they put it in the next
10 shelf --

11 A. Yes, ma'am.

12 Q. -- for the next person to vote?

13 A. Yes, ma'am.

14 Q. Okay. And how long does that process take
15 normally?

16 A. Well, it depends upon the schedule of the
17 board members, how soon they're able to work on their
18 files. I mean, it could vary. That's all I can tell
19 you. I mean, there might be a board member that's on
20 vacation for a week, and they get piled up on them.

21 Q. Well, especially because there's, like --
22 15 of you individually are hearing --

23 A. Yeah. There's a lot of files. I'll just
24 put it that way. They never go away. So --

25 Q. So do you have a sense of how -- well, let

1 me rephrase that.

2 How much time do you spend on reviewing a
3 file?

4 A. From another board member?

5 Q. Yeah.

6 A. As much as I feel is necessary. I
7 generally read them all.

8 Q. When you say "read them all," do you mean
9 every page?

10 A. Entirely.

11 Q. Every page?

12 A. The majority of them. I won't say every
13 page.

14 Q. Okay.

15 A. But I know -- at this point in time, I've
16 been there 2 years and 26 days. At this point in time,
17 I know what to look for in these files generally. But
18 the violent crime ones, I read them all.

19 Q. Okay.

20 A. But I read all of them, but some -- some of
21 them, I hit the high spots.

22 Q. Okay.

23 A. You know what I'm saying? The crime itself
24 and --

25 Q. So for the particular types of cases at

1 issue in this case, the juvenile life without parole
2 cases --

3 A. I would read them all.

4 Q. Okay.

5 A. And I read the one case that you're here
6 about in its entirety --

7 Q. Okay.

8 A. -- at some point in time. I think it was
9 back in May.

10 Q. Okay.

11 A. Whatever it was, if I remember right.

12 Q. How much time do you spend on reviewing
13 that file when you're voting? I mean, you said you
14 review it all, but I'm trying to get a sense of, is
15 that hours? Is that --

16 A. On one file?

17 Q. Yeah.

18 A. Well, it depends on the severity of the
19 case and how long of -- how big the file actually is.

20 Q. For these individuals, juvenile life
21 without parole?

22 A. Well, I probably spent a good half-hour or
23 better on that -- on the particular case that you're
24 involved with, on that one.

25 Q. And this isn't when you're voting on it?

1 When you're the voting --

2 A. I didn't vote on the case that you're --
3 the Brown case. If that's what you're asking me. I
4 mean, I --

5 Q. No.

6 A. I didn't do the hearing. I voted on it.

7 Q. I understand that. I'm not talking about
8 any specific case. I'm just saying, when you were
9 voting on a juvenile life without parole case, trying
10 to get a sense of how much time you spend, and you said
11 about 30 minutes?

12 A. At least.

13 Q. Okay.

14 A. I think they're serious matters. Very
15 serious.

16 Q. And you said you read every page?

17 MR. SPILLANE: I'll ask for a verbal
18 answer. I'm not sure that you got a yes or no.

19 (Whereupon, Reporter read pending
20 question.)

21 A. In the particular cases you're talking
22 about?

23 BY MS. JONES:

24 Q. The juvenile life without parole?

25 A. I have. The ones that I've seen. There

1 hasn't been that many of them.

2 Q. Do you ever ask any questions of those at
3 the hearing, about those cases?

4 A. Juvenile life cases? I have not.

5 Q. Okay. So I'm going to switch gears for a
6 second and ask you about any training you received for
7 your role on the board. Can you walk us through the
8 training you've received?

9 A. Well, we have -- we have online training
10 and different -- different courses.

11 Q. So let's start when you first started in
12 December of '15.

13 A. Uh-huh.

14 Q. Was there any overall training about the
15 roles, responsibilities, how you go about conducting
16 parole hearings?

17 A. Well, it was explained to me by Mr. Ellis,
18 who was the chairman at the time, the procedures and
19 what went on. And how the process worked. We probably
20 spent a couple hours in his office approximately. And
21 how the process worked. And most of them would be
22 starting out on-the-job training, reviewing hearings;
23 things of that nature. And then you'd jump in and get
24 your feet wet.

25 Q. Were you given any written materials to

1 refer to?

2 A. Yeah. Different -- there's different
3 scenarios that come up, like a good time credit. I
4 mean, I was given the forms to kind of -- guidelines as
5 to how good time credit worked. And there's different
6 scenarios where I received individual sheets of paper
7 that could come up on different cases to study.

8 Q. Can you -- and I know you're not going to
9 remember all of them.

10 A. I don't. I'll be honest with you.

11 Q. Okay. So can you remember something other
12 than good time credit?

13 A. Well, as to -- each of the files are
14 tabbed. They have a different colored tab on them.

15 Q. Are you talking about parole files?

16 A. Yes.

17 Q. Okay.

18 A. Offenders' files. When you get them on
19 your shelves, they have a red tab or an orange tab or a
20 green tab or -- or they don't have any tabs at all.

21 I was given the sheet handout as to what
22 each one of those tabs meant.

23 Q. Okay.

24 A. Which I studied and grasped as to what was
25 going on with each file, when they had one of those

1 **tabs on them.**

2 Q. Any other written materials you can recall?

3 A. **I'm sure there was some, but not that I can**
4 **recall.**

5 Q. Do you refer to any written --

6 A. **They're kind of like -- I want to call them**
7 **cheat sheets, but sheets that you might need to --**
8 **along the way, as to why certain things are the way**
9 **they are.**

10 Q. Okay. So then you said you got on-the-job
11 training?

12 A. **Lots of that. I think I -- I don't**
13 **remember. A couple weeks of reviewing parole hearings.**

14 Q. So you --

15 A. **At least a week. Maybe two.**

16 Q. So you observed hearings before you started
17 participating on a panel?

18 A. **Yes, ma'am.**

19 Q. Okay. At what point did you start
20 conducting?

21 A. **Maybe within a week or two, I think.**

22 Q. Within a week or two of starting or within
23 a week or two after --

24 A. **After --**

25 Q. -- observing?

1 **A. -- observing.**

2 Q. Okay. And how long was that observation
3 period, do you think?

4 **A. About a week or two. I'm not sure about**
5 **that. I'm not going to tell you something I don't**
6 **know. No more than two weeks. I'll put it that way.**

7 Q. Okay. Did you receive --

8 **A. Which would actually be, you know, eight**
9 **days maybe, even though I had a four day -- you know.**

10 Q. Okay.

11 **A. I'm just being upfront with you.**

12 Q. Did you receive any, like, formal training,
13 where there's a presentation being made?

14 **A. No. I guess that depends upon your**
15 **definition of formal. I'd say no.**

16 Q. I'm saying something other than you being
17 in with the chairman or supervisor going over things,
18 and other than on-the-job training, was there any other
19 types of training, be it going to a seminar or, you
20 know --

21 **A. I went to Colorado to the academy there for**
22 **a week.**

23 Q. When --

24 **A. National Corrections Institute I think it**
25 **is.**

1 Q. I'm sorry for cutting you off.

2 You said a Colorado academy?

3 A. I forget. It's National Corrections
4 Institute. Maybe that -- I'm not -- I'm not sure on
5 that. They have an academy in Colorado -- in Colorado,
6 Denver. I spent a week out there. That was about six
7 months after I got -- six to eight months after I got
8 on the board I'm thinking. And I'm not sure about that
9 date. But I'm thinking it was -- I'm thinking it was
10 in the first year.

11 Q. Who all from the board attended that
12 academy?

13 A. Ms. Zamkus. We were the only two at that
14 time.

15 Q. The only --

16 A. Zamkus. Excuse me. We were appointed at
17 the same time.

18 Q. Okay.

19 A. So we both went to that.

20 Q. So is that something that all board members
21 go to when they first are hired?

22 A. I think that's correct. But don't hold me
23 to that.

24 Q. Okay.

25 A. And then a lot of times it depends upon the

1 financial situation of the department, whether they can
2 afford to send somebody.

3 Q. So what was covered at that academy?

4 A. Lots of things had a -- you know, I mean, I
5 could go into the whole gamut of things, you know.
6 There's people there from all over the United States;
7 Tennessee to Massachusetts to California, from
8 different parole board members were there for the
9 training. Covered everything from hearings to -- about
10 every aspect. And there was scenarios, different
11 scenarios on -- and the classrooms and there was
12 different things and training.

13 Q. So there was a --

14 A. Discussion groups.

15 Q. So there was a lecture component?

16 A. Right.

17 Q. A practical component where you actually
18 were --

19 A. In groups --

20 Q. Okay.

21 A. -- correct.

22 Q. Did it revolve around how to conduct
23 hearings?

24 A. For -- some of it did. I'm not going to
25 say all of it did. Percentage-wise, I don't -- I

1 couldn't give you a percentage.

2 Q. Can you think of other topics that were
3 covered?

4 A. Well, just how it was handled in various
5 states, parole boards, how they conducted their
6 business. To give everybody an idea of what went on
7 from state to state. Lots of states are different; do
8 it in a different manner.

9 Q. Can you think of anything else?

10 A. Not off the top of my head.

11 Q. Can you think of any other formal type
12 training that you attended?

13 A. No. But I have a lifetime experience on
14 the Highway Patrol interviewing, which I think is
15 important when you talk to an offender. To draw the
16 information out of them that you need to draw out of
17 them to make an evaluation or a judgment of them, you
18 know.

19 I've done a lot of interviewing. From
20 criminal cases on the Highway Patrol to on the gaming
21 commission, a lot of interviewing. We actually
22 interviewed the people that they hired. We had to go
23 through us to interview them, at the boats.

24 Q. Uh-huh.

25 A. They could either be hired or they couldn't

1 because of their records or not. And that went through
2 us.

3 I don't know if they still use that
4 procedure or not. We were just starting then. But we
5 interviewed all the employees.

6 Q. Did you get any training on the law?

7 A. The law --

8 Q. Missouri law, as it affected the parole
9 hearings?

10 A. Other than how the parole board is
11 comprised regarding the parole board itself, I wouldn't
12 call it training. I took it upon myself to look at all
13 the statutes and stuff.

14 Q. Okay. So we're talking about the different
15 types of training that you received. You had kind of
16 some from your supervisor, the chairman. You had
17 on-the-job training. You had some formal training,
18 namely the Colorado academy, or the National
19 Corrections Institute. You did some self-learning,
20 correct?

21 A. Correct.

22 Q. So just focusing on the formal training
23 that was delivered to members of the board, I'm trying
24 to understand if there was anything else that you can
25 recall.

1 Did you-all get any formal training about
2 the new Senate Bill 590 when that came out?

3 **A. When it came into effect, we were aware of**
4 **it -- made aware of it and got a copy of it. I think**
5 **it was passed out to the board members.**

6 Q. Did anybody present to the board, you know,
7 what 590 meant?

8 **A. Directly having a meeting with somebody, I**
9 **don't recall that. I'm not going to say we did not, it**
10 **didn't happen. I don't recall it.**

11 Q. Are you familiar with the case of
12 Miller versus Alabama?

13 **A. Not in detail.**

14 Q. The U.S. Supreme Court case back in 2012
15 that --

16 **A. About the life without paroles?**

17 Q. Uh-huh. So what is your understanding of
18 that case?

19 **A. Well, it's my understanding that they're**
20 **entitled to -- they -- the offenders are now entitled**
21 **to a hearing.**

22 Q. Do you understand --

23 **A. That's the main crux of it.**

24 Q. Do you understand why?

25 **A. I probably heard it before. I don't know**

1 **if I could tell you.**

2 Q. Are you familiar with the case providing
3 that only the rarest juvenile offenders whose crimes
4 reflect permanent incorrigibility should be eligible
5 for life without parole?

6 A. I don't know if I -- I probably read that,
7 but I don't know. I guess I am aware of it, but now
8 that you brought it up...

9 Q. What does that -- what do you understand
10 that to mean?

11 A. Read that again, please.

12 Q. Only the rarest juvenile offenders, those
13 whose crimes reflect permanent incorrigibility, are
14 eligible for life without parole?

15 A. Just what it says. Only the rarest.

16 Q. Okay. Meaning that only a --

17 A. Life without -- those with life without
18 parole when they were juvenile offenders.

19 Q. So that should not be a common or the norm?

20 A. Correct.

21 Q. That that would be only reserved for the
22 select few that are particularly --

23 A. I agree with you.

24 Q. Okay. Have you heard of the Montgomery
25 case?

1 **A. No. Not off the top of my head, no.**

2 Q. So when did you first become aware of
3 Senate Bill 590?

4 **A. Probably about two and half -- two years**
5 **ago. Right after I came to the parole board.**

6 Q. So you came in December of '15?

7 **A. November -- well, I was actually there in**
8 **November. The day after Thanksgiving.**

9 Q. Okay. So do you know when Senate Bill 590
10 came out?

11 **A. The exact date it was passed into law?**

12 Q. Not the exact date, but like when it was --

13 **A. No, I don't -- no, I don't know what date.**

14 Q. So do you know -- did you learn --

15 **A. I think was two years ago. A little over**
16 **two years ago. That's my guess.**

17 Q. Were you aware of it before it became
18 effective?

19 **A. No.**

20 Q. Okay.

21 **A. No.**

22 Q. Were you aware or had any knowledge when it
23 was in the process of being drafted?

24 **A. No.**

25 Q. So you had no role in that part?

1 **A. No, ma'am.**

2 Q. Are you aware of any board members having
3 any role in the drafting of it?

4 **A. Not to my knowledge.**

5 Q. And so you became aware of when it became
6 effective?

7 **A. Correct.**

8 Q. Okay. And how did you become aware of it?

9 **A. I think actually one of the analysts told
10 me. Mr. Baker.**

11 Q. So --

12 **A. He made me aware of it in passing by his
13 office, and we kind of sat down and chatted about it
14 for a minute. He kind of told me what it was. But we
15 had a copy of it passed around, like I said before.**

16 Q. So did the board members -- the board, as a
17 unit, talk about it, Senate Bill 590, and what it
18 meant?

19 **A. I think we've had discussions in the board
20 room over -- yeah. Generally what -- I mean, it wasn't
21 a formal meeting about it, but we all ended up talking
22 about it.**

23 Q. So was it ever explained to you-all what it
24 meant?

25 **A. Yes.**

1 Q. Okay. And who did that?

2 A. I did that by reading it. Like I said, it
3 was passed out.

4 Q. No -- I understand that you read it. But
5 I'm saying -- I'm trying to understand if anyone came
6 and talk to you-all and explained it, or if the
7 chairman talked to you-all about it?

8 A. I think Mr. -- I don't think we had a
9 formal meeting. Don't hold me to that. I think
10 Mr. Ellis (sic) made us aware of the -- of that new
11 law.

12 Q. Okay. Was there any concern about it?

13 A. The only concern is we do what was right by
14 the law. Abide by the law.

15 Q. So did the board feel like it fully
16 understood what 590 required?

17 A. I -- generally, I think -- I can't speak
18 for every board member.

19 Q. Uh-huh.

20 A. But I read it and I grasped what it is.
21 Those particular offenders have the opportunity and the
22 right to have a hearing, you know.

23 Q. Did you understand what you were supposed
24 to consider in that hearing?

25 A. Well, there's several different factors.

1 When I read -- when I read about it, no. Not at that
2 time, I didn't. But I've learned since then, there's
3 certain things that we take into consideration.

4 Q. And how did you learn that?

5 A. We had a sheet passed out or somebody --
6 somehow we acquired a sheet through the -- probably the
7 lead analyst, I'm guessing, to make sure certain areas
8 were covered regarding the offender.

9 Q. Is there anything else that informed your
10 understanding of what was required by 590, other than
11 that sheet and you reading the legislation?

12 A. Not that I can remember. I'm not sure
13 though. Not that I can remember.

14 Q. And there was no formal training that the
15 board received on 590?

16 A. I guess it depends upon your definition of
17 formal. I remember us all gathering at one time and
18 talking about it in the board room. That's when we
19 saw -- we had a copy of the statute and discussed it in
20 general terms.

21 Q. So do you recall what you-all were
22 discussing?

23 A. What was -- what was required of the board
24 regarding the new senate bill.

25 Q. Were any concerns expressed about the

1 ability to do that?

2 A. No. Concerns? I don't understand what you
3 mean. There was no concerns about it. I mean, it's
4 the law and we had to -- we follow the law.

5 Q. Right. I understand that. But like as far
6 concerns about ability to do it, the ability to
7 understand --

8 A. No.

9 Q. -- certain factors that were supposed to be
10 considered?

11 A. No, I don't think so.

12 Q. You, personally, did not have any concerns
13 about things --

14 A. No, ma'am.

15 Q. And is that based upon anything in
16 particular?

17 A. No. Based on the fact that it's the law
18 and we're required to do it. And I follow through with
19 the law and accept it for what it is and it's the law,
20 and I personally feel we do it all right.

21 Q. What steps are you aware of that the board
22 had taken to ensure that it is complying with the law?
23 That you-all are complying with what 590 requires?

24 A. Well, I was -- well, there's three or four
25 different things that we try to get covered in the

1 hearing in regards to those particular type of
2 offenders.

3 I think I've only personally had one that I
4 actually conducted the hearing myself. And to tell you
5 the truth, I can't remember the gentleman's name. I
6 don't know what case that was.

7 But we looked at each case with certain --
8 you know, have they been rehabilitated? Have they
9 matured since they've been in prison? What's their
10 conduct while they're in prison? What's the risk of
11 releasing them? There's probably another one. I think
12 there's four or five altogether. But all those things.

13 We deal all about risk. The parole board
14 does. I think you probably understand that. To the
15 community.

16 Q. So I want to talk a little bit about the
17 parole hearing.

18 A. Yes, ma'am.

19 Q. Do you have any idea of how an inmate goes
20 about requesting a hearing?

21 A. I do not. I don't know all the details of
22 it.

23 Q. Do you know how much time elapses between
24 the time he requests the parole hearing and that
25 petition is processed and then the time of the actual

1 hearing?

2 **A. I think -- no, I don't. But I think that**
3 **can vary under different circumstances.**

4 Q. Do you know if there's, like, a maximum
5 time period?

6 **A. I don't know.**

7 Q. And you said -- and correct me if I'm
8 wrong -- that the first time you review a parole
9 hearing -- I mean, a parole file for a hearing that
10 you're conducting, is the day of, correct?

11 **A. Yes, ma'am.**

12 Q. When you're actually in the room, either in
13 the video conference room or at the facility where it's
14 an in-person, correct?

15 **A. Correct. And I said it was a rarity, that**
16 **I think one time I went and looked at a file, because a**
17 **victim's witness could not be there. And I had to find**
18 **the file and put the phone conversation I had down in**
19 **that file, so it'd be part of the file, because the**
20 **victim could not show up. So I had to look at that**
21 **file beforehand to make sure I had the right one.**

22 Q. So --

23 **A. But it's very rare.**

24 Q. Okay. In that particular instance, you
25 said you had a phone call with the victim?

1 A. With the victim of the crime, right. That
2 she could not make it. I talked to her on the phone,
3 and she expressed her concerns about the offender. She
4 couldn't make it to the -- she could not make it to the
5 hearing that day.

6 Q. And did you --

7 A. I made notes from the conversation and put
8 them in the file so the other board members would know.

9 Q. Did you review that file before you spoke
10 to that victim or --

11 A. No. I got a note from the victim's witness
12 section, that the lady wanted me to call her.

13 Q. Okay.

14 A. And that was a hearing I was going to have
15 the next day. So I had a conversation with the lady,
16 took notes, made notes on the sheet that was given to
17 me from the victim's unit. I put it into the file. So
18 I had to go find the file to do that for the next day.

19 Q. And did you review that file then or --

20 A. No. I made sure I had the right file.

21 Q. Okay. So what's typically included in the
22 parole file?

23 A. Well, obviously there's a board action
24 sheet. And there's a prehearing report.

25 Q. So when you say -- I'm sorry to cut you

1 off, but when you say "a board action sheet," do you
2 mean just a form?

3 A. Yes, ma'am.

4 Q. Okay. Sorry to cut you off.

5 A. A prehearing report from the district
6 administrator or parole officer. Their history.
7 Criminal record. Salient factor score. Sheet,
8 usually. What else...there's a lot of things in there.
9 Those are the main ones, the ones I just gave you.
10 There's a lot of information on all those sheets, you
11 know.

12 Q. Uh-huh.

13 A. And actually in that report, as to their
14 education and health and things of that nature.

15 Q. Do you know when a parole file is created?

16 A. When it is actually created?

17 Q. Uh-huh.

18 A. The folder itself is made up? I can't
19 answer that. I don't know.

20 Q. So there are -- obviously are people who
21 come into the system with a parolable offense, which is
22 a different situation from our guys who had life
23 without parole?

24 A. Yes, ma'am.

25 Q. Are you aware of any difference between the

1 time that someone who entered the system with a
2 parolable offense, their parole file was created,
3 versus the time when the juvenile life without parole
4 individual's parole file was created?

5 **A. I do not.**

6 Q. Are you aware of different contents being
7 kept in one file, the parolable offense file, versus
8 the non-parolable offense?

9 **A. No. I don't know how that worked.**

10 Q. Have you noticed any differences between
11 those two types of files?

12 **A. Well, I think I've only seen two, the life**
13 **without parole ones.**

14 Q. Uh-huh.

15 **A. But I did not notice any difference.**

16 Q. Do the couple, handful of life without
17 parole files you've seen, did they have --

18 **A. I'm talking about actually seeing -- myself**
19 **seeing the files.**

20 Q. I understood. Yes.

21 Did those include, like, court documents?

22 **A. Oh, yeah, you're right. That's another**
23 **thing that's usually in there, the judgment, the court**
24 **judgments are usually in those files too. That's one I**
25 **didn't mention.**

1 Q. Are there any other court documents that
2 could be in a parole file?

3 A. If there's an order for restitution in some
4 cases. That could be in there, now that you mentioned
5 it. There's a lot of papers in one of those files.

6 Q. Uh-huh.

7 A. That's the other one I didn't think of. If
8 the Court's mandated paying somebody back their losses,
9 you know, restitution.

10 Q. Have you ever seen, like, a trial
11 transcript in a file?

12 A. The actual transcript of the trial?

13 Q. Transcript of the trial.

14 A. Uh-huh. I don't think so. I'm not going
15 to say yes or no, but I don't believe so. I don't
16 recall seeing one. It's not the norm, I'll put it that
17 way.

18 Q. Okay. So other than the judgment and
19 order, or the order of restitution, are you aware of
20 any other court documents that might be in the file?

21 A. Not off the top of my head.

22 Q. Okay. Do you know if parole files for
23 parolable offenders, at the outset, are those files
24 regularly updated?

25 A. Yeah, they are. If somebody's out on --

1 actually out on -- if they've been released on parole
2 and something happens out in the field, where they're
3 arrested or anything, there's a sheet on the front that
4 kind of gives you guidelines as to what -- on the face
5 sheet. The face sheet is also in there by the way.
6 There's so many files in there. I couldn't think of
7 all of them.

8 The Department of Corrections has a sheet
9 up there that keeps you updated as to what's occurred
10 while they're out on parole or whatever.

11 Q. Is there any documents that you're aware of
12 that an IPO or someone at the institution would be
13 keeping track of or give an inmate, because they have a
14 parolable offense?

15 A. Could you repeat that, please?

16 Q. I'm trying to get a sense of an individual
17 with a parolable offense. Are there certain forms that
18 are being filled out while they're serving their time
19 that will be -- that will find their way into their
20 file?

21 A. I understand. If they have disciplinary
22 problems at the institution or something.

23 Q. So would it be a document that's just
24 recording problems? Or would it be more detailed about
25 things to do to correct behavior? Or plans for them to

1 reach or attain certain goals?

2 A. I'm trying to visualize that. Usually if
3 they commit some kind of disciplinary problems, conduct
4 violations within the institution, there's a record of
5 that made by the institution in there. And it's --
6 actually, it's sent back to the headquarters to go in
7 their file at some point in time. Back to the office,
8 to go in their file at some point in time.

9 And sometimes there'll be comments that
10 they need to do this or that to rectify their problem,
11 you know, their disciplinary problem.

12 Q. Have you seen that type of documentation in
13 one of the juvenile life without parole files?

14 A. Not that I can recall, but I don't know. I
15 don't remember.

16 Q. Do you have any sense of whether there's
17 anything missing from a juvenile life without parole
18 file?

19 A. I don't understand. What do you mean by
20 "missing?"

21 Q. Well, I'm saying, like, compared to someone
22 who came into the system with a parolable offense; do
23 their files look any different?

24 A. For the most part, I don't think so.
25 Generally speaking.

1 Q. You can't identify anything in particular
2 that would be different from one versus the other?

3 A. No. No, ma'am. Not that I'm aware of.

4 Q. And I believe you said you don't know when
5 a parole file is created, correct?

6 A. Not for certain, no.

7 Q. Okay. I'm trying to get a sense of where
8 those files are maintained; do you have any idea?

9 A. They're maintained in the office, you know.
10 I mean, they come from the --

11 Q. From the institution? Where they're being
12 housed?

13 A. I don't know where they originate at, if
14 that's what you're asking me. Who originates the file
15 physically? I can't answer that.

16 Q. Okay.

17 A. I would say it's someone in the general
18 office, but I do not know.

19 Q. Okay. So you don't know whether or not
20 that file would move from facility to facility if they
21 got transferred?

22 A. Well, if there's a -- they have a -- I
23 don't know.

24 Q. Fair enough.

25 A. I'm not going to tell you something I don't

1 **know.**

2 Q. So are the documents maintained in
3 electronic format?

4 A. Some of them are. Most of them, I think,
5 **now.**

6 Q. So if you wanted to access somebody's
7 parole file today --

8 A. Uh-huh.

9 Q. -- is it possible for you to pull it up,
10 you know, through the board's computer system?

11 A. Yes. There's different -- there is
12 different places have you to go to get all the -- our
13 computer systems are not -- everything's not in one
14 place. There's two or three different systems you have
15 to go to. And the only one I ever use is FileBound.
16 I've not -- I don't use the other ones.

17 Q. So what --

18 A. Because I don't know how to use them.

19 Q. So what's available through FileBound?

20 A. Generally the -- generally the -- for the
21 most part, the history of the individual that you would
22 find in their file; for the most part.

23 Q. What about the --

24 A. I don't use it a lot.

25 Q. What about the prehearing report?

1 A. That would be in some -- I've seen it in
2 some FileBound reports. Probably in all of them.

3 Q. What about letters of recommendation?

4 A. Some of those are in there.

5 Q. Meaning, some of them are not?

6 A. Whatever is there is there. I'm just
7 saying generally -- some of the files I've seen have
8 them and some don't.

9 Q. How do you know you have the complete file?

10 A. Well, I don't guess. I would know that for
11 sure.

12 Q. So the only way --

13 A. Whatever is there, is there.

14 Q. The only way you know you have the complete
15 file is when somebody gives you the physical file and
16 says, here's this individual's file?

17 A. Correct.

18 Q. And you don't know who maintains that
19 physical file?

20 A. Well, it's maintained at the office. I
21 mean --

22 Q. When you say "the office, you mean --

23 A. Probation and Parole office.

24 Q. Okay.

25 A. The actual physical file.

1 Q. Right. I'm just trying to get an
2 understanding, because I imagine that letters of
3 recommendation could be coming to the facility.

4 A. And they get them back. If something comes
5 to the facility, they send those to be indoctrinated
6 with the file to come into the office. They go into
7 the file. I've seen that happen several times. If
8 they're sent to the institution, they forward them to
9 the office.

10 And it's understandable they send them to
11 the institution. It's usually the only place they're
12 aware of, you know. I mean, unless they do some
13 investigating as to a different address.

14 Q. Is there anything in the juvenile life
15 without parole files that deals specifically with
16 Senate Bill 590?

17 A. Not to my knowledge. But the one that I
18 conducted personally, I tell them or ask them, why
19 they're having a hearing today. Because of Senate Bill
20 ... and they usually say, yes, they're aware of it. I
21 go, "Do you understand why you're having a hearing
22 today? Because of Senate Bill" ...

23 Q. Right. And what I was getting at, was
24 there anything in the file that deals specifically with
25 the factors that 590 says you're supposed to consider?

1 A. Other than that little sheet that we have
2 in there. Usually the analyst has it. He takes
3 possession of it -- he or she -- to make sure that we
4 cover the five -- four or five points that are on
5 there, that come out at a hearing.

6 MS. JONES: I'm going to mark an exhibit.

7 (Deposition Exhibit No. 1 was marked for
8 identification.)

9 BY MS. JONES:

10 Q. When you talk about the worksheet that's in
11 the file that deals with the 590 factors, is that the
12 sheet you're referring to (indicating?)

13 A. That's the one I couldn't remember a while
14 ago, that the offender's accepted accountability for
15 the offense. That's the one I did not mention a while
16 ago. All the rest of them are on here. Yes.

17 Q. So that's the worksheet in the file that --

18 A. Either I or the analyst has.

19 Q. Okay.

20 A. The analyst usually maintains that to make
21 sure that we cover that area. Or they'll ask the
22 questions that didn't come out in the hearing that
23 might be on there.

24 Q. Okay. So are you aware of anything else in
25 the parole file that deals with the Senate Bill 590

1 factors?

2 A. Not to my knowledge. I'm not going to say
3 there isn't, but not to my knowledge.

4 Q. Have you ever found any errors in a parole
5 file?

6 A. Have I ever found any errors in a parole
7 file personally?

8 Q. Yes.

9 A. Occasionally there might be a typo of some
10 nature as to release date or guideline dates or
11 something that you pick up on pretty easily. That you
12 know that they can't be that way, and you deal with the
13 analyst and we'll get it straightened out. But most of
14 it is just typos.

15 Q. Are you aware of anybody else on the board
16 identifying errors in a parole file?

17 A. Not to my knowledge.

18 Q. Can the inmate see his parole file?

19 A. Not during their hearing. I mean, we've
20 never -- not to my knowledge. I don't think they have
21 the right to see it. I mean, at that particular time,
22 they don't have the right to see it.

23 I've never conducted a hearing where I've
24 showed them their file. If that's what you're asking
25 me.

1 Q. Yes.

2 And you're not aware of them having access
3 to their file otherwise?

4 A. Well, I don't know.

5 Q. Okay. So you just know that they don't get
6 it during the hearing?

7 A. Correct.

8 Q. Do you know why that is?

9 A. No, not really. We just don't give them
10 access -- we don't put the file there too and let them
11 look through the file or hand files to them. I mean,
12 we're using the file to interview them with. We do not
13 give them the file physically.

14 Q. Has anyone, any inmate ever asked to see
15 their file?

16 A. Not at any hearings that I've held.

17 Q. Are you aware of any inmates asking to see
18 their file?

19 A. No.

20 Q. Are you aware of any board policy that says
21 they can't see their file?

22 A. No. That's a good question. I never
23 thought about it before.

24 Q. Do you know whether an inmate's attorney
25 can see the parole file?

1 A. I don't know. I don't why they wouldn't be
2 able to, but I don't know the answer to that.

3 Q. You have never --

4 A. I've never encountered that --

5 Q. Okay.

6 A. -- particular situation.

7 Q. Does the prosecutor in the case or -- you
8 know, from the jurisdiction, get to see the parole
9 file?

10 A. I've not had that happen. You mean they
11 were actually at the hearing? A prosecutor?

12 Q. Uh-huh.

13 A. I did have -- I did have one -- I've only
14 had one hearing, in over two years, where a prosecutor
15 was actually there, a federal prosecutor. And he did
16 not see the parole file. Or ask to see it.

17 Q. Can the victim or the victim's
18 representative --

19 A. No.

20 Q. -- see the file?

21 A. I've never done had -- I've never done
22 that, where I've let them look at it.

23 Q. Okay.

24 A. It's never happened to my knowledge. I'll
25 put it that way.

1 Q. What about the victim's advocate, do they
2 get to see the parole file?

3 A. **No. Not at any hearings I've conducted.**

4 Q. So you're not aware of anyone, other than
5 board members, analysts, or the IPO, the individuals
6 who were at the facility, having access to the parole
7 file?

8 A. **That's all I'm aware of. There could be
9 other people though.**

10 Q. Fair enough.

11 And you're not aware of any specific policy
12 dealing with that?

13 A. **No. And there could be one that I've not
14 made -- been made aware of or know of, but I don't
15 know.**

16 Q. So you talked about a prehearing report
17 being in the file, correct?

18 A. **Uh-huh, yes, ma'am.**

19 Q. So do you recall generally what's in a
20 prehearing report?

21 A. **Well, what the person's been charged with
22 and the sentence. And the report -- police report
23 that -- whether it came from the parole officer or the
24 district administrator, the report taken from the
25 police reports, as to how their crime occurred and what**

1 happened and the particular crimes involved. And then
2 how they were arrested and why they were arrested. And
3 just a general -- that report is just general
4 information about why the person is there. What
5 happened. What was the crime. And what they were
6 sentenced to and whether they pled guilty or not.
7 Pretty general information about the case overall.

8 Q. Does it include anything about -- from the
9 victims?

10 A. Only in the report, what their response was
11 to the crime, whether they admitted to it. Or comments
12 they made during the crime.

13 The victim?

14 Q. Yes.

15 A. I apologize.

16 Q. Okay.

17 A. Would you say that again then?

18 Q. Does the prehearing report have any --

19 A. There's a victim's section.

20 Q. Okay.

21 A. Is that what you're asking?

22 Q. Yeah. Okay.

23 A. As to what affect it had on the victim,
24 yes, ma'am. There's a lot of information in that
25 report.

1 Q. And earlier you spoke about a salient
2 factor score. Is that something that's in the
3 prehearing report, too?

4 A. It's a separate -- it's a separate sheet.
5 But there is a place on the prehearing report I think
6 where it may -- it may say what their salient factor
7 score is. Minus four, minus three or whatever.

8 Q. What's a salient factor?

9 A. Well, it's based on 14 different -- 14
10 different subjects, I guess you wanna say. And there's
11 a way by -- each one of these numbers have a certain
12 weight. It's a formula where they derive at this point
13 a particular factor number. You know, dealing with
14 age, the crime. There's 14 different factors. I don't
15 know them all off the top of my head.

16 Q. And what does it --

17 A. It gives you an idea -- to me, personally,
18 it gives me an idea of whether the offender has a --
19 would have a tendency to -- to do crime again,
20 basically.

21 Q. Okay.

22 A. And if you get one -- somebody down there
23 that's minus five or six or something, with this
24 factor -- and I don't know who developed the factor to
25 be honest with you, would give one the tendency to

1 believe they have -- they have the tendency to repeat
2 crime. I think there's some talk of doing away with
3 that in recent times. But that's what it is now.

4 Q. Do you know who calculates the salient
5 factor score?

6 A. I do not.

7 Q. Is it anybody from the board?

8 A. No. I'm pretty sure of that. I'm not
9 aware of it. If it is, no. I'll say no.

10 Q. Is it likely the IPO?

11 A. I don't know.

12 Q. Do you know if they have to conduct an
13 interview with the person in order to calculate that?

14 A. I don't know.

15 Q. Do you know if the salient factor score is
16 used for juvenile life without parole offenders?

17 A. I don't recall.

18 Q. So you don't know if there was one used or
19 one provided for the juvenile life parole offender
20 hearings that you conducted or voted on?

21 A. I don't remember. There could have been.
22 I don't remember that.

23 Q. So who prepares the prehearing report?

24 A. The prehearing report?

25 Q. Uh-huh.

1 **A. Usually the parole officer and the district**
2 **administrator. They compile all the criminal**
3 **information and put it all in the report. And go from**
4 **there.**

5 Q. And when you say "parole officer," are you
6 referring to the IPO?

7 **A. Institutional parole officer, yeah.**

8 Q. Are you aware of what type of training, you
9 know, the IPO receives in order to do those reports?

10 **A. No.**

11 Q. Do you know how they collect that
12 information?

13 **A. I would assume -- you should never assume,**
14 **but from various existing reports that they have access**
15 **to. Court documents. And they had police reports, and**
16 **things of that nature.**

17 Q. Are you aware of any forms that they use to
18 gather the information to do that report?

19 **A. The IPOs and those folks?**

20 Q. Uh-huh.

21 **A. No. Actual forms, no.**

22 Q. So I'm going to mark an exhibit. This will
23 be No. 2, which is Bates labeled AG029 through 42.
24 It's an email, and it includes an attachment. And it's
25 called the juvenile life without parole -- life without

1 PHR worksheet.

2 (Deposition Exhibit No. 2 was marked for
3 identification.)

4 BY MS. JONES:

5 Q. Have you seen that document before?

6 A. I do not believe I've seen this before.

7 Q. Okay.

8 A. This one page (indicating), right?

9 Q. No.

10 A. The whole thing?

11 Q. Yeah.

12 A. Okay.

13 Q. Does this cover the topics that you are
14 used to seeing in a prehearing report?

15 A. For the most part, from what I've seen --

16 Q. Uh-huh.

17 A. -- it covers most of the recidivity. Yes,
18 ma'am.

19 Q. Okay. But you haven't seen --

20 A. But I've not actually seen this I don't
21 think. I mean --

22 Q. Okay. Fair enough.

23 A. -- that I can recall.

24 Q. Okay. And that was my question, had you
25 seen that report before. Okay. All right. That's

1 all.

2 A. But some of the things that are in here are
3 in the prehearing report obviously.

4 Q. Okay.

5 A. The arrest and convictions and so forth.
6 Several things are in there.

7 MS. JONES: We can take a break.

8 (A break was taken.)

9 BY MS. JONES:

10 Q. So earlier -- and I want to revisit
11 something. Earlier we were talking about the average
12 number of parole hearings that could be held in a given
13 day. And you estimated around 6 to 12?

14 A. For one person?

15 Q. Yeah.

16 A. Approximately. It used to be a lot more.

17 (Deposition Exhibit No. 3 was marked for
18 identification.)

19 BY MS. JONES:

20 Q. Okay. I'm going to mark this as Exhibit 3,
21 which is AGO385 to 387. And it is board meeting
22 minutes from May 1st of this year. And you'll note
23 that it says you were present.

24 Do you recall being present at that
25 meeting?

1 **A. (No response.)**

2 Q. Okay. And in particular, I'm going to
3 direct you to number 7, topic 7, which is on the last
4 page of 387 about raising the caps of hearings.

5 **A. My name is on it. I assume I was at the**
6 **meeting. I don't remember in particular.**

7 **No. 7?**

8 Q. Correct.

9 **A. Yes. I remember that now. Now that I saw**
10 **that, I seconded that motion.**

11 Q. Okay. So does that refresh your
12 recollection or have any impact on your estimate of up
13 to 12 hearings? And, again, I know you said it was an
14 estimate.

15 **A. I think we capped them at 15.**

16 Q. Okay. So --

17 **A. Supposedly. That didn't always work that**
18 **way though.**

19 Q. Okay. But the low and medium
20 classification institutions can have 18 hearings, and
21 the high level will remain at 15?

22 **A. Yes, ma'am.**

23 Q. Do you know if that's being done currently?
24 Is that pilot program in place?

25 **A. I think they're trying to do it. The board**

1 chairman, they're trying to do that, and whoever sets
2 those hearings is trying to abide by this.

3 Q. Okay.

4 A. But it's not that easy. It doesn't always
5 happen that way.

6 Q. Okay. Have you ever --

7 A. For a lot of different reasons.

8 Q. Understood.

9 A. Yes, I do remember this, ma'am.

10 Q. Okay. Have you ever had a day with 18
11 hearings?

12 A. Since I've been on the board?

13 Q. Yes.

14 A. Yes.

15 Q. You have?

16 A. Yes.

17 Q. Okay.

18 A. Not very many.

19 Q. Okay.

20 A. I can't give you a number.

21 Q. Okay. Thank you.

22 And then we were also talking about certain
23 parole hearings or that inmates require a full hearing
24 or a vote from the full panel, correct?

25 A. Yes, ma'am.

1 Q. Okay. And that means that at least four
2 members would have to vote to allow a release, correct?

3 A. Yes, ma'am.

4 Q. Do all members on the board actually vote,
5 or does the vote end once you get to the fourth vote in
6 favor of parole?

7 A. Well, you can finalize it. You can
8 finalize a release date if you've got enough votes.

9 Q. Okay. So --

10 A. I can finalize it, the final decision, if
11 there's enough votes.

12 Q. So what I'm trying to understand is the
13 file goes from person to person, right?

14 A. Yes, ma'am.

15 Q. So there's one vote at a time. So if the
16 first four board members who are voting all vote the
17 same way, so you get to four --

18 A. No need for me to vote.

19 Q. Okay. So then that's where it ends, right?

20 A. The fourth person can finalize the release
21 date. Does that answer your question?

22 Q. Yes. Thanks.

23 So before the break, we left off going over
24 the prehearing report. And I believe you stated that
25 you had not seen that prehearing worksheet that the

1 IPOs use in completing the prehearing report, correct?

2 **A. Correct. But all those elements are in the**
3 **report that we normally see.**

4 Q. So is it fair to say that you haven't seen
5 the guidelines that the IPOs use to prepare that
6 report?

7 **A. That's fair, yes.**

8 Q. Are you familiar or aware of any other,
9 like, risk assessments that are performed on an inmate
10 in, you know, this parole process, you know, to
11 determine whether or not they are of high-risk,
12 low-risk, to returning to society?

13 **A. Not off the top of my head, no. Maybe I**
14 **don't understand your question.**

15 Q. Well, one of the things we talked about was
16 the salient factor score and how that --

17 **A. Determined by 14 factors.**

18 Q. Uh-huh.

19 **A. Correct.**

20 Q. Are there any other risk assessment tools
21 that you are aware of that are used during the parole
22 evaluation process?

23 **A. Not that I'm aware of. I think they're**
24 **sometimes given drug -- drug assessments are given at**
25 **some of the institutions. But you don't really base**

1 that -- that's whether they should be treated or not.

2 Q. Yeah, okay.

3 A. But, no. To answer your question, that's
4 all I know of.

5 Q. Do you know who would know whether or not
6 other risk assessments are used?

7 A. Not for sure, no.

8 Q. So I want to talk a little bit about some
9 of the different roles that are involved in preparing
10 for a parole hearing. We spent a little time talking
11 about IPOs.

12 Do you know what an IPO's responsibilities
13 are in general?

14 A. The definition of what their
15 responsibilities are?

16 Q. Your definition.

17 A. They're the main parole officer at the
18 institution, you know.

19 Q. And what are their roles and
20 responsibilities?

21 A. Well, I can't give you an exact on that.

22 Q. What's their role in context of the parole
23 hearing?

24 A. Well, they help -- they help prepare that
25 prehearing report would be the best way I could say

1 **that. Actually day-to-day inside the institution, I'm**
2 **not -- I couldn't give you a guess on that.**

3 Q. Fair enough.

4 So I'm just going to focus it on, in
5 context of the parole hearing. And you're saying that
6 they -- the prehearing report, preparation of the
7 prehearing report?

8 **A. Correct.**

9 Q. And I believe we covered this, but is it
10 your understanding that they actually interview the
11 inmate?

12 **A. I think they do.**

13 Q. Okay. Do you have any sense of time -- any
14 sense of how much time they spend with the inmate to do
15 that?

16 **A. I do not.**

17 Q. Are you aware of anyone else in the process
18 who has direct contact with the inmate prior to the
19 parole hearing to gather information that you-all
20 consider?

21 **A. Am I aware of anyone else at the**
22 **institution?**

23 Q. Well, are you aware of anyone else who has
24 any direct contact who provides information to the
25 board to consider?

1 **A. No, I do not.**

2 Q. Okay.

3 **A. There could be a caseworker involved there**
4 **someplace. I don't know.**

5 Q. Okay. The board members don't have contact
6 before the hearing?

7 **A. No.**

8 Q. The parole analysts, do they have contact
9 before the hearing?

10 **A. With the offender?**

11 Q. Yes.

12 **A. No. Not to my knowledge.**

13 Q. Are you aware of any IPOs having any
14 concerns about gathering information for the 590
15 factors?

16 **A. No.**

17 Q. Do IPOs participate in the actual hearing?

18 **A. Usually it's the district administrator.**

19 Q. Are you aware of any times an IPO --

20 **A. Not to my knowledge. I'll put it that way.**

21 Q. Do you ever talk to an IPO about ...

22 **A. Me, personally?**

23 Q. Yes.

24 **A. I mean, I may have talked to some casually,**
25 **but not directly about a case or anything.**

1 Q. And that's what I'm referring to;
2 specifically about a case.

3 A. No.

4 Q. And is that --

5 A. I have never done that.

6 Q. Okay. Are you aware of any other board
7 members doing that?

8 A. Not to my knowledge.

9 Q. Is there a policy that says -- that governs
10 that?

11 A. Not that I'm aware of.

12 Q. What is the parole analyst's
13 responsibilities in connection with the parole hearing?

14 A. They're also to do -- they also do the
15 interview. Participate in the interview. They would
16 be one of the lead interviewers.

17 Q. The hearing panel?

18 A. Right. Part of the panel.

19 Q. Okay.

20 A. So they actually -- they're actually the
21 first -- the lead person on that particular hearing.
22 They do the hearing.

23 But their main thing -- the main reason
24 they're there is they're quite helpful in analyzing the
25 ranges and guidelines as to how long we can or cannot

1 keep an offender. They're very -- that's their
2 expertise, I guess. Analysts -- it's pretty
3 complicated, as to what the crime is, you know, and
4 different levels of crimes, and how far the guidelines
5 can go or can't go, when they have to serve 40 percent
6 or 50 percent or 80 percent. There's a lot of factors,
7 but they analyze the whole situation, as far as the
8 sentencing and the guidelines.

9 Q. Do you have those type of factors with the
10 juvenile life without parole individuals?

11 A. I think it's on the sheet, if I remember
12 right.

13 Maybe I don't understand your question.

14 Q. So you were saying before that they helped
15 analyze the range and guidelines as for when, I guess,
16 certain offenders are eligible for release?

17 A. Well, I don't think -- since this came
18 about, I don't think that was ever there before in the
19 report, the guidelines; because it's a life sentence.
20 Of course, if they had done, like, an ACA that was also
21 involved or a --

22 Q. Uh-huh.

23 A. They probably already served the time for
24 that length of period they'd been there. That might
25 be.

1 Q. Okay. Right. And I guess that's what I'm
2 getting at. I'm trying to get at, are there -- are
3 the -- the juvenile life without parole cases are a
4 little different; are they less complicated because
5 they have --

6 A. The guidelines don't exist --

7 Q. Right. Okay.

8 A. -- for the most part. Well, they don't
9 exist, you know. They're there for life, the way it's
10 set up, until this came about.

11 Q. How do -- how does an analyst's
12 responsibilities differ from a board member's
13 responsibilities?

14 A. Well, they're pretty much the same for the
15 most part, as far as interviewing the offender.

16 Q. Uh-huh.

17 A. Obviously a lot of them have a lot more
18 experience than any of the board members, as far as
19 that goes, because they're career people with the
20 Department of Corrections. And not all -- obviously
21 not all parole members are.

22 So they have more experience --

23 Q. Uh-huh.

24 A. -- at the hearings probably than about any
25 parole board member, the way the system is set up.

1 Q. Do they get the parole file at the same
2 time as the board members get the parole file for being
3 on the panel?

4 A. They usually get them the day before. One
5 of the clerks at the office brings it to them the day
6 before, a couple days before. And put them in their
7 office, the actual files that we're going to hear. Put
8 them in the briefcase the day we leave in the morning
9 or where we're going or to the room we're going to.

10 Q. Are you aware of the analysts reviewing the
11 file before the day of the hearing?

12 A. Not to my knowledge. I'm not going to say
13 they haven't. I don't know.

14 Q. Fair enough.

15 The parole analysts only, I guess, review
16 the files for the panels that they sit on, correct?
17 They don't vote on the other parole files?

18 A. No. But they make -- they make
19 recommendations. Like if somebody does something to
20 advance their date --

21 Q. Uh-huh.

22 A. -- we cancel and release. They'll tell us
23 why the recommendations are, and we either go along
24 with it or we don't. That's in the office itself.
25 They see those quite often.

1 Our office is an extension. Somebody with
2 bad behavior.

3 Q. Okay. So from the point in time that
4 there's a hearing --

5 A. Yes, ma'am.

6 Q. -- right -- and now the hearing's been
7 held. They come back. You all vote. And for the
8 board members, it goes from shelf to shelf for all the
9 people to vote on it, right?

10 A. Correct.

11 Q. I guess I'm trying to understand after the
12 parole hearing, does an analyst have any further
13 responsibilities on particular parole -- inmates who've
14 had parole hearings?

15 A. I think they probably take those files back
16 from that day and review them, make sure everything's
17 correct as to what went on, and then pass it on to the
18 next board member.

19 Q. Well, do they make any recommendations on
20 files that they didn't sit in on the hearing?

21 A. The only example would be what I just told
22 you. If there's an early release or somebody is
23 being -- conduct problem, there's an extension.

24 Q. Okay.

25 A. They put that -- we have an ASAP shelf and

1 they put them up usually for us to take care of.

2 Depending upon the date -- the dates involved.

3 Q. Do you know whether or not the analysts
4 have contact with the IPOs?

5 A. I'm sure they do by phone, I would guess.

6 Well, I know they do. If they want to call them, they
7 can.

8 Q. Do you know if it's related to, like, those
9 guidelines and range issues or --

10 A. I can't answer that.

11 Q. You don't.

12 A. I know that some of the analysts get a lot
13 of phone calls about various cases for various reasons.

14 Q. Do you have any idea if they have any
15 conversations about the Miller factors or the 590
16 factors?

17 A. I mean, I doubt it. I don't know. I don't
18 know.

19 Q. So after an inmate submits a petition for a
20 parole hearing, do you know what happens next? Like,
21 do you know who actually determines when the hearing
22 will occur?

23 A. I do not, for sure.

24 Q. Do you know who receives notice that a
25 parole hearing has been set?

1 A. Well, obviously the offender will at some
2 point in time.

3 Q. Do the victims receive a notice?

4 A. They probably do through the victims' unit.
5 Through the victims' advocate unit, I would say. I'm
6 almost certain of that.

7 Q. So the parole board would send out a notice
8 to the victim advocate group, who would in turn notify
9 the victim?

10 A. Somebody gives that information to the
11 victims' advocate group that somebody is coming up for
12 a parole hearing. I don't know for sure, so I don't
13 want to tell you something I don't know. But somewhere
14 there's a hearing set for the violator. And if there's
15 a victim involved, the victim's advocate unit gets
16 involved and she's to contact the victims to see if
17 they want to come and participate in the hearing. Have
18 their peace to say. Whatever they want to say about
19 the offender. But I don't know the exact process.

20 Q. Okay. So we talked about the
21 victim being -- victim, victim advocate being notified,
22 the inmate, and then the prosecutor's notified?

23 A. Not in every case I don't think.

24 Q. Do you --

25 A. I don't know that for a fact. They may be

1 **sent a letter that there's going to be a hearing, but I**
2 **don't know.**

3 Q. Do you know whether or not defense counsel
4 for the inmate receives notification from the board?

5 A. **I do not.**

6 Q. So are hearings assigned to you on a
7 rotation?

8 A. **What do you mean by "a rotation?"**

9 Q. So when we were talking earlier, I thought
10 that's what came out.

11 So, like, you know, if today somebody gets
12 set for a hearing in two months, how do they decide
13 who's going to be on the panel?

14 A. **I don't know.**

15 Q. Okay. So you -- you get files. You get
16 files.

17 A. **I don't get -- I get the files when I get**
18 **to the hearings.**

19 Q. Yeah, right. That's --

20 A. **I don't know who sent them.**

21 Q. Okay. So do you know --

22 A. **I don't know who -- I don't know how they**
23 **determine who's going to be the parole officer or the**
24 **parole --**

25 Q. So do you know, like, okay, on Wednesday,

1 next Wednesday, I'm going to have ten hearings. Do you
2 have the names of the people?

3 A. I don't have the names. I have a schedule
4 with the number of hearings.

5 Q. Okay. How is an analyst assigned to --

6 A. They're usually -- generally, since I've
7 been there, it looks to me like they stay with one
8 parole board member a week at a time, through one full
9 week of hearings --

10 Q. Okay.

11 A. -- generally.

12 Q. So how many -- do you how many parole
13 analysts there are?

14 A. If you give me a minute, I can tell you. I
15 can visualize it. There's probably ten in the office.
16 Ten or eleven --

17 Q. Okay.

18 A. -- analysts. But only five of those
19 actually go to the hearings. The other ones do special
20 out-of-state stuff on the -- the other analysts on the
21 other side of the room, on the other side of the
22 hallway --

23 Q. Okay.

24 A. -- they do, like, interstate stuff and
25 parole violator stuff and things of that nature. They

1 all have a certain assignment.

2 Q. Okay.

3 A. There's like ten that goes -- ten or eleven
4 actually called analysts, but there's only five -- and
5 I want to make sure that's right -- five -- five, I
6 think, that actually go out to parole hearings with the
7 board.

8 Q. Okay.

9 A. And sometimes, if one of them is sick or
10 something or something unusual happens, those other
11 analyst folks will fill in.

12 Q. Okay. But on average you're saying you
13 work with a given analyst for a week at a time?

14 A. Normally speaking. Normally.

15 Q. Okay. Do the panel members take notes
16 during the parole hearing?

17 A. Sometimes. Sometimes I do. Not always.
18 Usually I work off the report. Anything I want to
19 discuss or talk about, I usually highlight it with a
20 yellow highlighter or pencil, if something jumps out at
21 me.

22 Q. So is there something in particular that
23 would make you take notes?

24 A. Well, yeah. Well, I don't -- sometimes I
25 take notes. I don't know. I can't tell you why. If

1 something's said that I feel is important that I want
2 to go visit -- revisit, you know, about.

3 Q. What do you do with your notes after the
4 hearing?

5 A. Usually wad them up and throw them in the
6 trash can. They don't usually go in the file, if
7 that's what you're asking me.

8 Q. Do any panel members complete a form during
9 the hearing?

10 A. Complete a form?

11 Q. So, for example, we were talking about
12 Exhibit 1.

13 A. Oh, the -- with the five points on it?

14 Q. Yes.

15 A. Some of the analysts -- the analyst usually
16 handles this sheet (indicating) --

17 Q. Okay.

18 A. -- for the most part. In my hearings --

19 Q. Uh-huh.

20 A. -- that I do anyhow. I can't speak for
21 everybody. They usually take notes on this sheet, or
22 fill it out sometimes during the hearing.

23 Q. Okay.

24 A. Or they may wait till the end, you know.

25 Q. So it's a matter of preference?

1 A. Yeah. It depends upon the analyst.

2 Q. Okay. And is it your sense that if they do
3 it after the hearing, it's immediately after the
4 hearing?

5 A. Yes, ma'am.

6 Q. Okay. Is it done before --

7 A. I mean, they may. They may bring -- I
8 don't know. They could bring the files back to the
9 office and maybe they forgot to put something on there
10 they felt like they should have.

11 Q. Okay. So do -- in your hearings, you say
12 the analyst handles it. Do you -- do you review it to
13 say, yes, I agree with --

14 A. Well, I make sure that most of those -- all
15 of those areas have been covered.

16 Q. Okay.

17 A. Feel comfortable about all those areas
18 having been covered. And usually the analyst will let
19 me know if they -- I've only done, like, two, I think.

20 Q. Uh-huh.

21 A. Maybe three. But I think I've only been
22 involved in two. You probably know. But usually I let
23 the analyst handle it.

24 Q. Okay.

25 A. And we review it. You know, make sure

1 everything's been covered.

2 Q. Okay. And you do it that day?

3 A. Normally --

4 Q. Okay.

5 A. -- I would say.

6 Q. Do you-all use computers during the
7 hearings?

8 A. I do not. I'm not an IT guy. I mean, the
9 analyst does. Some of the analysts use it. A couple
10 of the parole board hearings use -- two or three, I
11 think, probably use computers to check on road notes.
12 There's a file in our road notes as to the behavior of
13 the person inside the institution and things of that
14 nature.

15 Q. Is that something that's in that parole
16 file? Those notes that they're referring to on the
17 computer, is it also in their file?

18 A. I cannot answer that.

19 Q. Is that -- are those --

20 A. It's probably in there if I was guessing.
21 If it's a conduct violation of some sort.

22 Q. Are those notes that you review?

23 A. The road notes that the -- I don't --
24 sometimes I'll look over at them when I realize they
25 had some, what you call road notes, up on the screen,

1 **just see what it is.**

2 Q. All right. Well --

3 A. **It's usually nothing that would affect the**
4 **hearing. I'll just put it that way. In my opinion.**

5 Q. Let me make sure I understand what road
6 notes are. Is that -- is that something that the
7 analyst is writing during the hearing?

8 A. **No, it's --**

9 Q. Or is it something that --

10 A. **It's already in the computer.**

11 Q. Okay.

12 A. **From the institution.**

13 Q. Okay.

14 A. **Things that have occurred.**

15 Q. And you don't know whether or not that's
16 also in the physical file that's in front of you during
17 that panel hearing?

18 A. **Correct. Some of it could be. Some of it**
19 **might not be. I'm assuming it was -- if something**
20 **occurred after that report was typed up --**

21 Q. Uh-huh.

22 A. **-- it could be in the road notes in the**
23 **computer. I call them road notes. That's what they go**
24 **to.**

25 Q. And is it based on conduct violations?

1 A. From my understanding, mainly that's all I
2 saw in there.

3 Q. So you haven't seen any other topics
4 that --

5 A. I have, you know, and I can't tell you
6 exactly what they were. It might be pertaining to
7 detainers or something that have been issued or
8 something. I'm not sure about that.

9 Q. So is that something that the parole
10 analyst would know about?

11 A. They have access to the road notes.

12 Q. Do you have access to it?

13 A. I have access to it. I don't use it.

14 Q. You've never used it?

15 A. Other than -- except for glancing over --

16 Q. Right. Individually pull it up?

17 A. No.

18 Q. So most -- are all hearings recorded, do
19 you know? Parole hearings?

20 A. Yes.

21 Q. Do you know how long those recordings are
22 retained?

23 A. You know, I think -- I don't want to answer
24 that. I want to say -- I want to say 90 days, but I
25 don't -- maybe -- I want to say six months.

1 Q. Have you ever gone back and listened to
2 them?

3 A. Me, personally?

4 Q. Yes.

5 A. I think I sat in a hearing -- or a meeting
6 one time where notes were played back. And I can't
7 even tell you what it was about. Or a hearing was
8 played back. And I can't even tell you what it was
9 about. I just happened to walk into the room and they
10 were, you know. I can't even tell you when it was or
11 who was in the room. But I remember one time for some
12 reason I went back and listened to something. Nothing
13 that I was familiar with. I'll just put it that way.

14 Q. And is it fair to say that you're
15 estimating the maximum retention period is six months?

16 A. That's my -- that's -- for some reason I've
17 heard that in the office; that they're held for six
18 months.

19 Q. Who would know that?

20 A. Steve Mueller would, the analyst -- lead
21 analyst. I'm sure. And then I don't know for -- for
22 some reason I got it stuck in my mind, 6 months or
23 90 days.

24 Q. Okay.

25 A. Either three months or six months.

1 Q. And I guess what I'm getting at, is it like
2 still available after five years? After two years?
3 Like, for example, if somebody gets a rehearing date in
4 two years or three -- five years down the line, would
5 their audio from -- the first audio still be available?

6 **A. After five years?**

7 Q. Uh-huh.

8 **A. I don't know for a fact, but I doubt it.**

9 Q. Okay. And I believe we talked earlier.
10 You were saying that the average lengths are about
11 20 minutes?

12 **A. Twenty minutes to thirty minutes. Twenty**
13 **minutes, I'm guessing, average.**

14 Q. Okay.

15 **A. A good 20 minutes.**

16 Q. What about hearings for the juvenile life
17 without --

18 **A. They're longer.**

19 Q. Okay.

20 **A. They should be.**

21 Q. And then you don't have a sense of range
22 one that?

23 **A. Forty-five minutes to -- I'm guessing,**
24 **average, 45 minutes.**

25 Q. Okay. Do you notice -- are you aware of

1 any difference between a parole hearing for an
2 originally parolable offense versus a juvenile life
3 without parole people?

4 A. Generally speaking, no. But I think, to be
5 honest with you, that we pay a lot of attention to it.
6 We want to give the offender the benefit of the doubt
7 in anything. Nothing else for all the time they've
8 served, you know. And we give them the benefit of the
9 doubt. We give them our, you know, upfront attention
10 and want to hear what they have to say. But generally
11 it's conducted in the same manner.

12 Q. Okay. I know you said you don't recall
13 specifically how many hearings you conducted on those
14 individuals. Do you recall how many times you voted on
15 any of them?

16 A. Juvenile --

17 Q. Juvenile life without parole individuals?

18 A. Obviously, the Brown case. I voted on
19 that. And then I heard one other one. Those two --
20 three -- it couldn't -- I don't know. I'm going to
21 guess three or four, but I don't know, okay.

22 Q. Do you ever recall voting to grant release?

23 A. I do not, but I want to think there was a
24 time I did. I don't recall.

25 Q. Are there any specific protocols in place?

1 A. As a matter of fact, can I embellish on
2 that a little bit?

3 Q. Yes.

4 A. I think that the one that I did -- I can't
5 remember the offender's name.

6 Q. Is it [REDACTED]? Does that sound familiar?

7 A. Yeah. We actually gave him a date if I
8 remember right. Don't hold me to that. I think
9 that's -- we hear so many cases.

10 Q. I understand. And I'm not trying to hold
11 you, you know --

12 A. But I think on the one that I conducted, I
13 think we gave him a date. If I remember right. But
14 I'm not certain.

15 Q. So are there any, like, protocols, either
16 oral or written, that you-all have for these 590
17 hearings?

18 A. No. Mainly to cover those five basic --

19 Q. Uh-huh.

20 A. -- that we get that involved in a hearing
21 somehow. That comes out in the hearing somehow. So we
22 have -- we're able to answer those questions, I guess.

23 Q. So --

24 A. Those issues.

25 Q. -- is that the only difference between an

1 originally parolable offense hearing and the 590
2 hearing, is this?

3 **A. For the most part, yes.**

4 Q. Okay. And when you say "for the most
5 part," you mean, yes, you can't --

6 **A. Yes.**

7 Q. -- think of any other things?

8 **A. I can't think of anything else.**

9 Q. Okay. And have there been any changes to
10 the way these 590 hearings have occurred since you-all
11 started having them?

12 **A. Not to my knowledge. We treat them just as**
13 **any other offender. I just want to tell you that. We**
14 **treat them just like any other offender. With**
15 **professionalism and treating -- we give them the**
16 **benefit of any doubts, as we should; because that's**
17 **what the law is.**

18 Q. Uh-huh.

19 **A. They get a fair hearing.**

20 Q. How many delegates can an inmate have at a
21 hearing?

22 **A. One.**

23 Q. Do they have to advise who the delegate is
24 going to be --

25 **A. Yes.**

1 Q. -- in advance of the hearing?

2

3 A. Yes, ma'am. I'm not sure what the protocol
4 is on that, but they have to.

5 Q. Do you know if a delegate is given any
6 specific instructions about what they can and cannot do
7 at the hearing?

8 A. Well, the only thing I know about that part
9 of it is, when they come to the institution, there's a
10 dress code that they have to have when they come into
11 the institution to go to the hearings. It's all -- no
12 matter if -- there's a dress code before they can
13 actually go into the hearings.

14 That's the only thing I'm aware of off the
15 top of my head. I mean, if they -- I don't want to go
16 into a description or anything, but they have a certain
17 dress code they have to abide by before they let them
18 go back to -- to the hearing. And there may be other
19 factors, too, that I'm not aware of.

20 Q. So we're at the hearing at the facility, an
21 in-person hearing?

22 A. Yes, ma'am.

23 Q. At what point is the delegate allowed in
24 the room?

25 A. Well, they come in initially. We give the

1 offender the opportunity to introduce them to the
2 panel.

3 Q. So they come in --

4 A. Into the hearing room. They're there when
5 the offender comes in. Or shortly thereafter. Or
6 sometimes shortly before. They usually get there about
7 the same time.

8 Q. Are any instructions given to the delegate
9 in the hearing?

10 A. We just tell them that -- welcome them to
11 the hearing and tell them that -- obviously that your
12 family member -- whatever their name is -- is at the
13 parole hearing. We'll talk with them first.

14 At the end of that period of time, we'll
15 give you an option to speak on their behalf if you
16 choose to do to -- to do so, excuse me. It's not
17 mandatory. If you don't want to say anything, you
18 don't have to. But just the fact that you are here, we
19 know that he or she has support out in the community.
20 It's very important to us.

21 That's pretty well word by word. I've done
22 enough of them already.

23 BY MS. JONES:

24 Q. So the content of their comments, is that
25 limited in any way?

1 A. No. I mean, we -- no. I've never limited
2 anybody. But usually they don't speak that long. Five
3 to ten minutes at the most probably. I haven't had
4 anybody that's been that long. It's usually short
5 comments on what they can do for them, help them out in
6 the community.

7 Q. So with respect to the 590 hearings --
8 that's what I'll call them.

9 A. Okay.

10 Q. Can they talk about the Miller factors?
11 Those factors if they want to?

12 A. That particular case?

13 Q. You know, these --

14 A. No, I think -- to answer your question,
15 they're just like any other delegate. We want to draw
16 from them how they're going to help the offender once
17 they get released out in the community.

18 Q. Okay.

19 A. What they're going to do for them.

20 Q. Okay. So just to make sure I'm
21 understanding; if a delegate wanted to talk about the
22 circumstances of the offender's childhood, you know,
23 being subject to abuse or the growth that they've
24 season, the maturity that they've seen from that period
25 till now, are they allowed to talk about those things?

1 A. Yes, they're allowed.

2 Q. Can the delegate ask questions of the
3 board -- of the panel members?

4 A. No. That's -- generally, no. I mean,
5 we'll answer any question they have if we can. We just
6 won't shut them off --

7 Q. Uh-huh.

8 A. -- you know, if it's just a casual
9 question. But we don't let them -- let them talk to
10 each member on the panel individually or, you know,
11 interrogate them I guess is the best way to put it.
12 But we'll answer any questions they have that we can to
13 our knowledge, you know.

14 Q. If a delegate thinks that something has
15 been said that's incorrect during the hearing, are they
16 allowed to, you know, to voice that?

17 A. Yeah. I would say yes.

18 Q. Okay.

19 A. Yes.

20 Q. Has that happened before that you can
21 recall?

22 A. Not that I can recall. As far as one of
23 these 590 cases you're calling them; is that what
24 you're talking about?

25 Q. Well, in general and then specific to 590.

1 So in any parole hearing, are you aware of a delegate
2 pointing out an error?

3 A. They've probably done it just out of the
4 blue. They thought of something. And we accept that.
5 I mean...

6 Q. Okay.

7 A. We give everybody a fair chance to speak.
8 Within reason. Within reason. I mean, you know...

9 Q. I mean, can you -- can you recall a
10 circumstance where it was unreasonable, where you did
11 have to cut somebody off?

12 A. Well, sometimes they'll jump in while we're
13 talking to the offender and try to make a point. And
14 we'll tell them, we'll give you an opportunity --
15 excuse me, ma'am, or sir, you'll have an opportunity to
16 speak as soon as we finish talking to the offender.

17 Q. Okay.

18 A. Or your son or, whatever, your daughter.
19 We'll give you an option to speak. Just sit back
20 and -- we usually tell them to sit back and relax and
21 listen to the hearing. At the end of that period of
22 time, you'll have an opportunity to speak.

23 Q. Okay. Can you recall any other time you
24 had to cut them off?

25 A. Just somebody would jump in, say something,

1 and I would -- you can tell it's about a -- "we'll give
2 you an opportunity to talk about that a little later."
3 It's probably happened minimal. Minimal.

4 Q. Okay.

5 A. I can't give you a number.

6 Q. But you cannot recall a time where you cut
7 somebody off 'cause they were talking too long?

8 A. A delegate?

9 Q. Yes.

10 A. For talking too long? Not to my knowledge.

11 Q. So if a delegate wanted to talk for an
12 hour, would that be allowed?

13 A. I doubt it. I mean, there's got to be some
14 reasonableness about it, you know.

15 Q. Uh-huh.

16 A. I've never had that problem personally.

17 Q. Can the delegate bring anything into the
18 hearing?

19 A. I think I've had delegates bring in
20 pictures of a person in their childhood or something
21 like that. And we'll look at it and give it back to
22 them right away.

23 Q. Okay.

24 A. I guess it depends on what you mean, bring
25 anything to the -- I mean, I'm sure -- something

1 reasonable, I'm sure. I'll just put it that way.

2 Q. Okay. So if they brought something that --

3 A. Maybe they want to bring in their diplomas
4 and show them to the board. We'll look at them and
5 hand them back to them. Usually the offender has a lot
6 of those things available, diplomas or programs that
7 they completed or something of that nature.

8 Q. So can a delegate bring in something that
9 they want the panel to consider that's not already in
10 the file?

11 A. They could bring in letters from friends
12 and neighbors or -- that we'll put in.

13 Q. Okay.

14 A. We usually ask them if it's the only copy
15 they have, and they've usually made a copy of it. And
16 we put it in the file. I think I've had that happen
17 once or twice.

18 Q. So how often do defense attorneys attend
19 these parole hearings?

20 A. Very rarely since I've been on the board.

21 Q. Okay.

22 A. I don't think any of them hearings I've
23 heard there's been one there though that I'm aware of,
24 an actual defense attorney. There could have been one.
25 But not more than a handful. I'll just put it that

1 way.

2 Q. Does anyone communicate with the defense
3 attorneys prior to the hearing?

4 A. Like anyone?

5 Q. On the panel?

6 A. No.

7 Q. When is the defense attorney allowed to
8 enter into the room?

9 A. Well, if he's been -- comments as a
10 delegate for the offender, if he's been okayed or
11 certified or whatever, verified to come in, I'm sure he
12 or she can come in.

13 Q. So they only come in as a delegate, not as
14 their counsel?

15 A. Correct.

16 Q. Is that what you're saying?

17 A. Correct. My understanding of the way it
18 is -- I've not had that happen. Just that one time I
19 had that federal attorney, the U.S. District Attorney
20 from the eastern part of the state came in to a murder
21 thing.

22 Q. Uh-huh.

23 A. And we took testimony from him. That's the
24 only attorney, I think -- actual attorney that I'm
25 aware of that I've conducted with -- only hearing I'm

1 aware of, and the one time that there was an attorney
2 involved was that one particular time.

3 Q. Just to confirm, they're not there in any
4 legal capacity, correct? They're there as a delegate?

5 A. Yes. To my understanding. I mean, I
6 understand the difference. But usually they're just
7 there as a delegate.

8 Q. And so --

9 A. But I've never had any other than that one.

10 Q. Okay. And we just walked through, like,
11 what the delegate is allowed or not allowed to do.
12 That would also apply to the defense counsel who's --

13 A. There as a delegate, right.

14 Q. Who communicates with the prosecutors
15 before the hearing?

16 A. Usually the person that wrote the report,
17 the prehearing report. Or persons. They'll contact --
18 from my understanding, they'll -- they can contact the
19 prosecuting attorney.

20 Q. When does the panel --

21 A. If there's going to be a hearing. I assume
22 they do that. I don't know that for a fact.

23 Q. Okay.

24 A. I told you that earlier I think.

25 Q. When does the panel learn that the

1 prosecutor is going to attend a hearing?

2 A. It would be the day -- well, you would
3 get -- it would be the day of the hearing actually.

4 Q. Okay.

5 A. Normally. Unless there's some unusual
6 circumstances.

7 Q. So at what point in the process is the
8 prosecutor allowed in the room?

9 A. It would be just like any other delegate.

10 Q. The prosecutor?

11 A. Oh, the prosecutor?

12 Q. Yeah.

13 A. I've never had a prosecutor come to my
14 hearing. Other than that one attorney. I'm never --
15 you know, I'm not sure about that.

16 Usually, I think, they're -- somehow
17 they're notified there's going to be a hearing, but
18 usually they don't come to the -- I think it's --
19 normally the prosecutors don't come to the hearings.
20 In the particular county where the offense occurred or
21 something like that?

22 Q. Uh-huh.

23 A. Very rarely, I think, does the prosecutor
24 or his assistant come to a hearing. Although, it --
25 wait a minute. I did have -- I did have one other

1 case. Yeah, we have so many cases. Yeah, I did have
2 one other case where a couple of assistant prosecutors
3 came in, as the victim's advocate, along with them.
4 And they were also allowed to speak. I forgot about
5 that, as to why they did not want the person released.

6 Q. Okay. Is that otherwise reflected in the
7 parole file?

8 A. No. I don't think so. If there's a -- if
9 somebody's out on parole and they have a continuance,
10 they're already out on parole, they have a continuance
11 and their parole is revoked and they come back, and
12 when they have a hearing, sometimes the -- whoever
13 writes the reports, the IPO or parole officer,
14 whatever, will contact the sheriff for the county, the
15 prosecuting attorney and see if they oppose the release
16 of this person.

17 That's about the only time I can think that
18 the prosecutors -- other than that one hearing I just
19 told you about. They don't get involved a lot; let's
20 put it that way. The prosecuting attorneys.

21 Q. But the prosecuting attorney is always
22 notified?

23 A. I think so. I'm not going to say that.

24 Q. Okay.

25 A. As I said earlier, I don't know how -- I'm

1 **sure they are, but I don't know how that process works.**

2 Q. I'm trying to get a sense of how often you
3 know what the prosecutor's recommendation is with
4 respect to parole. Is it rare that you have a
5 recommendation one way or the other either for or
6 against?

7 A. **Regarding the parole hearing at hand?**

8 Q. Yes. Regarding whether or not to release
9 the inmate on parole?

10 A. **Usually the only time we, the parole**
11 **board -- when they come back on parole violations and**
12 **re-incarcerated, the person that writes the report will**
13 **contact the county prosecutor. Sometimes they don't**
14 **get an answer back, as to whether they oppose or --**
15 **release of the person or are okay with it. Either the**
16 **county prosecutor or the sheriff of the county where**
17 **the crime occurred. That's usually just on parole**
18 **revocation -- parole violators. They don't make any**
19 **recommendations in our normal reports; normal hearings.**

20 Q. So on the 590 hearings, you are -- if
21 you're saying it's not normal for the prosecutor to
22 make a --

23 A. **I don't believe that was in their hearings**
24 **that I -- the two or three that I participated in. But**
25 **I'm not going to tell you for sure if -- whether the PA**

1 **made a recommendation or not.**

2 Q. Are you aware of a scenario or a situation
3 in which the prosecutor is allowed to speak to the
4 panel before the inmate arrives?

5 **A. No. Me personally? No.**

6 Q. In those few situations where a prosecutor
7 is there that you recall, generally, are prosecutors
8 given the opportunity to rebut things that they hear
9 the inmates say during the parole hearing?

10 **A. No. 'Cause like I said, I don't think I've**
11 **had a hearing where an actual -- although what they**
12 **say, they're the -- other than that one, the two lady**
13 **prosecutors. They can't say anything. They make a**
14 **statement first; the victim's advocate. And these two**
15 **particular ladies were assistant prosecutors. We let**
16 **them talk first. And then we brought in the -- they**
17 **chose to do it that way. Then we brought in the**
18 **offender and talked to the -- did the interview with**
19 **the offender. And they didn't get to speak after that.**

20 Q. Are there any policies or procedures in
21 place that deal with those sorts of things?

22 **A. Yeah, I think there is, as to -- as to**
23 **parole officers? Attorneys -- prosecuting attorneys?**

24 Q. Right. Yes. About the ability to rebut --

25 **A. I'm not aware of any if there is. I**

1 don't -- I don't know. I've not seen them written down
2 on paper that I'm aware of. There could be some
3 guidelines. I've not been involved with that many of
4 them to be honest with you, where the prosecuting
5 attorney is there.

6 Q. So talk a little bit about the victims,
7 when they attend parole hearings.

8 A. Uh-huh.

9 Q. Does the panel talk to them separate and
10 apart from the inmate?

11 A. They can -- they can decide -- they, the
12 victim, can decide before the hearing whether they want
13 to speak with the offender there or whether they want
14 to speak with the offender not present. They have that
15 choice.

16 Q. Uh-huh.

17 A. And they can stay for the offender's
18 hearing if they choose to do so, or they can leave
19 right after they speak.

20 Q. Okay.

21 A. Does that makes sense.

22 Q. Yes.

23 A. And if they choose to speak without the
24 offender there, then obviously that's what happened.
25 They make their statements to the board. The

1 offender's not in the room or at the facility,
2 depending on whether there's a video or not. And then
3 they can't say anything after that. They leave -- if
4 they leave the hearing room at that point in time, they
5 cannot return to the hearing room.

6 And they can stay, as I indicated, while we
7 interview the offender. If they choose to do so. But
8 they can't say anything. And I tell them, you can't
9 make any statements or holler something out that you
10 don't agree with. You may hear something that you
11 don't agree with, but that's the way it is. And you
12 can't make any statements beyond what you just made in
13 regard to this offense -- an offender.

14 Q. What if they make their statement with the
15 offender in the room? Can they direct any comments to
16 the offender?

17 A. No. They're not supposed to.

18 Q. When --

19 A. Directly to the offender. You know, like,
20 whatever. I hope you rot in hell or whatever.

21 Q. Uh-huh.

22 A. They cannot do that.

23 Q. When they make a statement before the
24 inmate comes in, is the inmate told what the victim
25 said?

1 A. No. I tell -- or I think we all do. At
2 least I do. I tell -- the first thing I tell the
3 offender, just for your information, we do have some
4 victim's witnesses in the room. They know it -- they
5 know it upfront.

6 Q. But they don't know whether or not they
7 spoke, let alone what they said?

8 A. They don't know what they said. And they
9 don't know who they are for the -- they probably have a
10 good idea who they might be, but they don't see them.

11 Q. Is the number of victims or, I guess,
12 family members of victims, limited?

13 A. There is a limit there. And I can't tell
14 you exactly what that is. You'd have to talk to the
15 lady in the victim's unit. I think there is a limit.

16 Q. Can it be --

17 A. We're pretty -- we're pretty liberal on
18 that. I'll just put it that way. In my opinion.

19 Q. So it can be more than one?

20 A. Yes, ma'am.

21 Q. Can it be more than five? Have you seen
22 that?

23 A. I've not seen more than -- I don't think
24 I've seen more than five.

25 Q. Okay. So somewhere between one and five?

1 **A. I'm guessing.**

2 Q. What's the role of a victim advocate at a
3 hearing?

4 **A. The victim's advocate?**

5 Q. Uh-huh.

6 **A. Is to obviously speak on behalf of the**
7 **victim. Speak on behalf of the victim.**

8 Q. So do they always -- do --

9 **A. If they choose to do so.**

10 Q. Okay. So there are occasions where the
11 victim's advocate is just there to observe?

12 **A. No. I've never held a hearing where --**
13 **they usually have something to say, you know. Some of**
14 **them get so emotional, they can't say. They don't**
15 **talk. They get so emotional.**

16 Q. And we're talking about victim's advocates,
17 right?

18 **A. Right.**

19 MR. SPILLANE: I'm going to ask a question,
20 because I'm not sure with whether you're talking about
21 the same thing that he is.

22 MS. JONES: Okay.

23 MR. SPILLANE: Are you asking about the
24 person from victim's services or a person that
25 accompanies the victim, like a friend?

1 THE WITNESS: Exactly.

2 MS. JONES: Thank you.

3 BY MS. JONES:

4 Q. I asked -- I'm talking about former. So we
5 spoke before about the victims and their support system
6 that they bring.

7 A. They can bring one supporter with them.

8 Q. Okay.

9 A. Is that your question?

10 Q. No. Now I'm talking about the victim's
11 advocate, who's, I guess, associated with the
12 department.

13 A. There's one of those in there.

14 Q. And I'm trying to understand what role that
15 person plays.

16 A. Just -- just to --

17 Q. Observe?

18 A. -- observe and comfort the victims,
19 basically. If they should be crying or something, they
20 get them tissues. They're there to support them in
21 some ways.

22 Q. Do they ever speak to the panel?

23 A. "They" being?

24 Q. The victim's advocate.

25 A. No. That works with Probation and Parole

1 you're talking about?

2 Q. Uh-huh.

3 A. The person?

4 Q. Yes.

5 A. No.

6 Q. Are they --

7 A. Excuse me. Do they ever speak to the panel
8 while the hearing's going on?

9 Q. Correct.

10 A. No.

11 Q. Like, do they present to the panel?

12 A. No.

13 Q. Do they ever attend in lieu of a victim?

14 A. No. Not that I'm aware of.

15 Q. So is it required --

16 A. Somebody from the victim's advocate unit?

17 Q. Yes.

18 A. No, not that I'm aware of.

19 Usually if the victim can't be there, like
20 the example I gave you earlier, we'll give the
21 information to the parole board member and we'll call
22 them and talk with them on the phone and make notes and
23 put it in the file.

24 Q. So --

25 A. We choose to do so.

1 Q. -- is there any kind of requirement that
2 either the victim or victim advocate must be present
3 for a parole hearing?

4 A. Is there a requirement whether the victim
5 or a victim's advocate? If there's a victim, then
6 usually there's a victim's advocate with them. I guess
7 I don't understand your question. I'm sorry.

8 Q. So in order to have a parole hearing, the
9 inmate has to be there, right?

10 A. Right.

11 Q. Okay. So now I think does -- does somebody
12 from the victim or victim advocate -- must someone from
13 that side be at the hearing as well?

14 A. They don't have to be there. I mean, if
15 there's a victim there, there'll be a victim's advocate
16 from the -- that unit with that person.

17 Q. But -- okay. So then that's when I'll ask,
18 is there ever a scenario where there's a victim
19 advocate without a victim?

20 A. Not to my knowledge. I've never had that
21 happen. I doubt it. Well, I'll take that back. I
22 think that has happened, for logistical reasons maybe,
23 if nothing else. I don't know what the policy is on
24 that for sure. Where I've had a victim in there and
25 I've gotten information from the victim advocate unit,

1 normally there's a victim advocate there. I'll just
2 put it that way.

3 It would be unusual that there isn't, but I
4 think perhaps I've had that happen. But I don't know
5 that for a fact.

6 Q. Okay. So --

7 A. I'm not going to lie to you.

8 Q. I appreciate that.

9 So there can -- there's normally someone
10 from the victim advocate's office there --

11 A. With them.

12 Q. Okay.

13 A. Right.

14 Q. Okay.

15 A. Yes, ma'am. Normally.

16 Q. And they would have coordinated with them
17 in advance, so it's likely that if they knew a victim
18 wasn't coming, that someone from the victim's advocate
19 office would not be there?

20 A. Right.

21 Q. Okay.

22 A. Okay. I'm sorry. I misunderstood.

23 Q. No. It happens.

24 (Deposition Exhibit No. 4 was marked for
25 identification.)

1 BY MS. JONES:

2 Q. So Exhibit 4 is AGO002435 to 2436, which is
3 a board action sheet.

4 A. Yes, ma'am.

5 Q. You're familiar with this document?

6 A. Yes, ma'am, very much.

7 Q. Okay.

8 A. This one has my initials on it. Did you
9 pick this out just for me?

10 Q. I did.

11 So is this a form that was created by the
12 board? Do you know?

13 A. I would assume so, yes, ma'am. It's been
14 there ever since I've been there.

15 Q. And you note there's a place on here for a
16 salient factor score, correct?

17 A. (No response.)

18 Q. Up at the top, like, so they have --

19 A. Oh, yes.

20 Q. Is there a reason why --

21 A. I have no idea.

22 Q. Okay.

23 A. I knew that was going to be your next
24 question.

25 Q. So just for the record, I was going to ask,

1 is there a reason why that's not filled out and --

2 A. I can -- I can only assume that it's
3 because this is a -- one of the offenders that we're
4 talking about. [REDACTED]. That they did not do it
5 because of his life sentence. It probably -- I don't
6 know why. I'm guessing that's why it doesn't have a
7 factor score.

8 Q. But doesn't the salient factor score, like,
9 predict, you know, how well they would do if released?

10 A. I don't disagree with you. But I don't
11 know why there's not a score there.

12 Q. Okay. Do you know when those scores are
13 calculated? So for the individuals who do get a score,
14 do you know when that score is calculated?

15 A. Not -- not -- no, I do not.

16 Q. Okay. So when is this form filled out?

17 A. This form here (indicating)?

18 Q. Yes.

19 A. At the hearing, for the most part.

20 Q. Who fills out this form?

21 A. I would say -- I can't recognize the
22 initials there. One of the -- well, obviously I
23 initialed here (indicating). Whoever else initialed
24 their places on here. And the top three lines was
25 filled out by -- this was the person at the

1 institution, the one on the right. In the middle was
2 the analyst at the top row. And I initialed the one on
3 the left side for re-hear. And then it went to the
4 board. And the next one to hear it was [REDACTED],
5 [REDACTED], and [REDACTED], who's now the
6 [REDACTED]. And we had four. So he did the final at the
7 bottom to reset a hearing at 12 of 2021.

8 Q. Okay. So this was completed -- this
9 started to be filled out after the hearing, right?
10 Like, immediately --

11 A. I can tell you what was done at the
12 hearing. Is that what you want to know?

13 Q. Yes.

14 A. The top three rows was done at the hearing.

15 Q. Okay.

16 A. I wrote in the conduct not good at the top,
17 in the comments. And the other ones would have been
18 done once it was passed on back at the office. And at
19 that time Ruzicka would have been the one I passed it
20 to. Or an analyst actually passed it to him. They
21 take them back. The analyst handles them. Passed it
22 him, and it went on down the line.

23 Q. Okay. So in the section called "hearing
24 panel comments" --

25 A. Uh-huh.

1 Q. -- what is that designed to capture?

2 A. Anything you can think is not good or
3 anything that is good.

4 Q. So is it --

5 A. That was my -- I put down "conduct not
6 good." And then, I don't have the -- it's been so long
7 ago, I forgot. When was this? December 16th. I don't
8 remember the specifics of why I put down "conduct not
9 good." But if I put it down, I can tell you the
10 conduct was not good.

11 Q. Is it designed to capture the basis for the
12 vote that the panel is making?

13 A. This particular area (indicating)?

14 Q. Uh-huh.

15 A. No.

16 Q. Right, so --

17 A. Generally speaking, no.

18 Q. So I guess I'm trying to get a sense of, is
19 there any guidance as to what is supposed to be --

20 A. No --

21 Q. -- completed?

22 A. -- I think about whatever any panelist
23 choses -- chooses to put in there. And generally, not
24 always, but the analyst does a lot more writing than we
25 do. For various reasons.

1 Q. And so I'm trying -- what I'm trying to
2 understand is like, what is this communicating to the
3 next board member who wasn't at the panel, who's voting
4 on it, right?

5 A. That the gentleman has a problem with
6 conduct while incarcerated.

7 Q. So is this in any way supposed to be
8 exhaustive of what you've learned about the inmate in
9 the hearing?

10 A. No. I mean, that's not my total overall
11 take about the person. But I would say his conduct was
12 not good at the time, and I made a notation of it. And
13 the other parole board members can take into
14 consideration that if they want to, or they don't have
15 to.

16 Q. I'm trying to get a sense of, like, why you
17 would write that.

18 For example, if you hear a lot about a home
19 plan, a family home plan and that's exceptionable,
20 what --

21 A. And I've probably written -- I've probably
22 written reports before where I put that down, where
23 they have a good home plan or a good interview. When
24 things are good, I put down good things. If they're
25 not, I put down things that are not particularly good.

1 Q. So is this to suggest that there was
2 nothing good from the hearing that come out when you
3 completed it?

4 A. No, no. Because they would --
5 they'll read -- they should read the report theirself
6 (sic), and they can make their own analysis of it.

7 Q. Well, the report, right, is different from
8 the actual interview with the panel.

9 A. Right.

10 Q. Right. So is this --

11 A. I'm not -- I'm telling the other panel
12 members that the person did not have good conduct while
13 incarcerated is what I'm doing.

14 Q. Okay.

15 A. And they can take it as they so choose --
16 desire to -- as they choose to do. Or they can read
17 the report and maybe consider it different. They may
18 think the conduct is good. But I did not at the time.

19 Q. So is it fair to say that you use this box
20 to indicate something that you determined was
21 noteworthy?

22 A. Jumped out -- jumped out -- jumped out at
23 me in the hearing.

24 Q. Okay. So it's not used to be complete?

25 A. No. No.

1 Q. It's not used to point out any specific
2 factor. It's just something that jumped out at you?

3 A. Yeah. And I don't remember -- I don't
4 remember what --

5 Q. That's fair. And I'm just trying to get an
6 understanding of how this box is used and what it is
7 communicating to the next person.

8 A. If I got one like this and I was the next
9 parole board member, I would go back. I would read the
10 report and look at his conduct and see how many conduct
11 violations that he or she may have had and why that
12 comment was made. And if I made it, I can tell you it
13 was probably with good reason. His conduct was
14 probably terrible. But I don't know.

15 Q. Uh-huh.

16 A. I mean, without going back and looking for
17 that report.

18 Q. Do you --

19 A. But they don't have to use that information
20 if they don't want to. They can make their own
21 assumptions from the report.

22 Q. How do you use that information when you
23 are -- when this ends up on your shelf and you have
24 to --

25 A. Well, I would probably read the whole

1 report and go look at the -- what -- what kind of
2 conduct it is, and how many violations. And obviously
3 the offender's not doing the correct things while
4 incarcerated.

5 Q. So would that signal something to you as
6 far as, like --

7 A. I would read the --

8 Q. -- to give this additional weight?

9 A. Ma'am?

10 Q. Would this -- would a comment in this box
11 signal that that should be given some additional
12 weight, because that's the only thing that was written
13 in there?

14 A. I think that everybody else should look at
15 it. If can't -- if they cannot abide by the rules and
16 regulations while incarcerated, it would be hard for me
17 to expect them to do that on the streets.

18 Q. Are these filled out the same for the 590
19 individuals versus individuals who are originally
20 parolable?

21 A. Yeah. They're all the same.

22 Q. So --

23 A. It's -- this is the same form. Is that
24 your question?

25 Q. Well, I mean, I get that it's the same

1 form. Where I'm going was, is there any attempt to
2 address Miller factors on this form that are supposed
3 to be required under 590?

4 **A. By Miller factors, you mean --**

5 Q. The fact -- the fact -- these factors
6 (indicating)?

7 **A. The juvenile without parole?**

8 Q. Yes.

9 **A. Oh, that's a separate sheet. I mean --**

10 Q. No, I -- I understand that. But I'm just
11 saying, is -- this is from the hearing panel comments
12 (indicating).

13 **A. Right.**

14 Q. Which this is, I guess, filled out by the
15 analyst, right?

16 **A. Normally.**

17 Q. Okay. So both of these things --

18 **A. Are together in the file.**

19 Q. -- are together.

20 **A. Can be observed by whoever reads the file.**

21 Q. Uh-huh.

22 Is it your understanding that this --
23 what's been marked as Exhibit 1, which is Bates number
24 AGO243, is it your understanding that these are all of
25 the Miller factors that the panel needs to consider in

1 determining whether or not to release one of the
2 juveniles for parole?

3 A. These four? Five, I mean?

4 Q. Correct.

5 A. Well, it's a part of the process. I don't
6 know if it's -- you know, we use that in determination
7 obviously.

8 Q. Right. I'm --

9 A. I guess I don't understand what you're
10 asking me.

11 Q. So is it your understanding that Senate
12 Bill 590 mandates the parole board to consider certain
13 factors when deciding whether or not one of the
14 juvenile life without parole individuals should be
15 released?

16 A. These five factors.

17 Q. Separate and apart from that. I'm saying
18 what 590 --

19 A. We consider all of this.

20 Q. Right. But is this everything that they're
21 supposed to consider?

22 A. I don't know if it's everything. It's
23 everything that -- obviously on the form that we comply
24 with.

25 Q. Is this -- are these the only factors

1 you-all consider when doing the 590 analysis?

2 **A.** Well, no, there's other -- I mean, we
3 consider a lot of things. Overall.

4 **Q.** Okay.

5 **A.** I guess you've lost me. We consider a lot
6 of other things besides just these. I mean, I put good
7 conduct -- conduct not good. If I can speak to this.
8 If you look at No. 4. Is this -- I don't know if it's
9 the same case or not. It doesn't matter. This person
10 had 24 conduct violations in a short period of time it
11 looks like. I don't know if it coordinates with this
12 one or not. I would assume it does, but I don't know.
13 So that's probably why that was brought up.

14 (Deposition Exhibit No. 5 was marked for
15 identification.)

16 BY MS. JONES:

17 **Q.** So we've placed in front of you Senate Bill
18 590, right? And you'll note that on the second page
19 starting around Line 5, it lists five factors that are
20 supposed to be considered. Do you see that?

21 **A.** Yes, ma'am.

22 **Q.** Okay. But then it also requires factors
23 listed on page -- starting on page seven.

24 **A.** Okay.

25 **Q.** Starting at line 12. Continuing to the

1 next page.

2 **A. Yeah, I see it.**

3 Q. There's an additional ten factors, right --

4 **A. Uh-huh.**

5 Q. -- do you see that?

6 Are you aware that those are factors that
7 are supposed to be considered?

8 **A. Yes, ma'am.**

9 Q. Okay. Is it --

10 **A. These first five obviously came out of the**
11 **Senate bill correct.**

12 Q. This is all Senate Bill 590.

13 **A. Right, uh-huh.**

14 Q. Okay. And so the question I was asking --

15 **A. Do we take into consideration these other**
16 **factors?**

17 Q. That's essentially what I was getting at.
18 And the way I was doing it was saying, is this sheet
19 the only sheet you refer to when you're trying to
20 ensure compliance with Senate Bill 590?

21 **A. At the hearing. But we also take into**
22 **consideration obviously some of these other factors**
23 **involved in that too.**

24 Q. Where is that reflected?

25 **A. Right here. (The witness indicated.) I**

1 mean, we take into consideration, you know, the
2 defendants participate in the offense. All these
3 things are taken into consideration during the hearing.
4 Maybe not directly.

5 Q. When you say "not directly," how else would
6 it be taken --

7 A. I mean, it usually comes out in the
8 hearing. Most all of this stuff, now that I get to
9 reading it, you know.

10 Q. Okay.

11 A. Most all of these -- what's it, nine of
12 them -- eight, nine of them?

13 Q. Ten --

14 A. They generally all come out at some point
15 in time during the hearing.

16 Q. Okay.

17 A. One way or another.

18 Q. Okay. So --

19 A. When we talk to them, you know, if they had
20 a bad childhood, brought up -- you know, that's one
21 example.

22 Q. Okay.

23 A. You had a rough life, you know, growing up.
24 We understand that. And it's unfortunate and -- it is
25 unfortunate, by the way.

1 But at some point in time, all these are
2 more than likely covered in the hearing --

3 Q. And --

4 A. -- even though they're not laid out on this
5 particular sheet.

6 Q. Okay. Is it memorialized in a writing
7 anywhere else?

8 A. These nine (indicating).

9 Q. What you learned about those nine factors
10 at the hearing.

11 A. Is it in a -- is it on a sheet like this
12 (indicating?) Not to my knowledge.

13 Q. Anything that is put on paper and then
14 given to the next member who's voting?

15 A. Not to my knowledge. These nine -- these
16 nine particular ones.

17 Q. Okay. And how does one -- like, for
18 example, No. 3, the defendant's age, maturity,
19 intellectual capacity, mental and emotional health and
20 development at the time of the offense; how do you get
21 at that?

22 A. You can usually tell by talking with an
23 offender. Usually we also have -- you can usually tell
24 if they've matured during their time while they're
25 incarcerated just by talking with them in their -- in

1 their capacity, intellectually and this indicates. And
2 sometimes the mental issue comes in. Some of them may
3 be -- we have different mental levels; one through
4 four.

5 You can usually get this from the defendant
6 by talking to them. Or offender. Excuse me.

7 Q. No. 3 three deals with those "at the time
8 of the offense," right?

9 A. Yes.

10 Q. So you would have -- you would have to ask
11 them or get information about their childhood
12 that -- at that time when the offense was committed,
13 correct?

14 A. Uh-huh.

15 Q. Okay.

16 A. And that happens.

17 Q. And you -- and that happens.

18 A. That happens. I mean, I'm not going to say
19 it happens 100 percent of the time, but 99 percent of
20 the time it does, you know.

21 Q. Uh-huh.

22 A. Not be -- some reason -- like I said,
23 humans make errors, you know. It might have been
24 overlooked. But generally all of this information
25 comes out for the most part during the hearing.

1 Q. Do you ask questions specifically designed
2 to get at that information?

3 A. Sometimes.

4 Q. Okay. Can you give me an example of a
5 question you would ask?

6 A. In regard to one of these factors?

7 Q. No. 3?

8 A. No. 3. Well --

9 Q. I mean, other than obviously how old are
10 you. I mean, that's kind of objective.

11 But their maturity and their intellectual
12 capacity, mental and emotional health at the time that
13 they committed the offense. How do you -- how do you
14 get --

15 A. It's hard to explain that. But you can
16 generally tell by talking with an offender as to, you
17 know, how these -- how these things relate to what's
18 going on.

19 This has a subsection. I can just tell you
20 that these factors do come out, in No. 3, you know.

21 You talk to them about how old were you at
22 the age -- when the crime was committed. They
23 obviously tell you that.

24 Were you still in school? Do you feel like
25 you were, you know, getting the right -- learning the

1 right habits growing up at home?

2 Did you have a mother and father with you?

3 How far did you get in school?

4 Intellectual capacity. You can usually
5 tell by talking to the folks.

6 And if they had any problems emotionally
7 while they're growing up. There's a whole bunch of
8 things. All that, for the most part, comes out.

9 Q. So are those questions that you typically
10 ask?

11 A. Just about in every hearing, you know.
12 Just about -- besides these (indicating.) You know,
13 you go over their childhood. How far they went in
14 school. And why they dropped out of school. All kinds
15 of things. You can bring a lot of this stuff out.

16 Q. Earlier we were talking about the training
17 that you received, and you said you hadn't received --
18 you can't remember any training about psychology?

19 A. Other than college. I think I had a
20 college course or something in college.

21 Q. Have you had any --

22 A. I believe. It's been a long time ago.

23 Q. Have you had any training about childhood
24 psychology?

25 A. Not specifically, I don't think.

1 The one -- if I can go to No. 6, the extent
2 of defendant's participation in the offense. The
3 reports bring that out. And we discuss all that with
4 them. I think all this stuff is -- when I say the
5 amount -- all this stuff, in one way or another, comes
6 out in some shape or form during a hearing.

7 Q. The effects of familial pressure or peer
8 pressure on the defendant's actions, that normally
9 comes out?

10 A. Which one is that?

11 Q. Seven?

12 A. Yeah. That comes out. Sometimes they
13 don't participate directly in a crime.

14 Yeah, that comes out. I think all this
15 stuff comes out at some point in time in the hearing.

16 Q. What about No. 9, the effects of
17 characteristics attributable to the defendant's youth
18 or the defendant's judgment?

19 A. I think that probably comes out, too.

20 Q. How?

21 A. Well, the fact is that you were young, you
22 know. I don't know. It all comes out when you
23 interview someone. They were young at the time. And I
24 get all that. And they may not have been using their
25 best judgment at the time. And usually that's brought

1 up in some -- you know, in the ones that I've
2 conducted. You probably wasn't thinking right when you
3 did that. Is it because of your age, perhaps, you
4 know.

5 Q. Well, do you get into specific
6 characteristics about the specific inmate? Right? Not
7 just, well, you were young, therefore...

8 A. We go over the ramifications of the case.
9 What occurred.

10 Q. Well, I understand that. As far as, like,
11 the nature of the offense. But I'm talking about the
12 nature that that child's life, up until that point in
13 time, the familial pressure, the -- any abuse that they
14 endured, the maturity, does that come out?

15 A. I think it does overall, speaking --
16 speaking in general terms. I really do.

17 Q. Okay.

18 A. About all of those.

19 Q. Okay. So we were looking at Exhibit 5. So
20 on the second page --

21 A. Of Exhibit 5?

22 Q. Yeah. Where it's marked, like, reasons for
23 decision above guidelines.

24 A. Where we at here? I can't --

25 Q. Um, it --

1 A. Oh, on the other sheet. I was on the wrong
2 one. Circumstances surrounding the present offense.

3 Q. Like who --

4 A. Who checked that?

5 Q. Yeah.

6 A. I can tell you who checked -- I did not
7 check that personally. That was checked by the
8 analyst.

9 Q. At what point in time was that checked?

10 A. At the hearing, more than likely.

11 Q. Okay. So --

12 A. I'm trying figure out who the analyst was,
13 but I can't tell you.

14 Q. So I'm trying to understand, like, the
15 board members are the ones whose vote count, correct?

16 A. Uh-huh. I mean, we conferred on that. I
17 mean, he or she would say, we're going to check "A" as
18 the present offense. Is that okay with everybody?

19 Q. When you say "we conferred," you're talking
20 about the panelists?

21 A. The analyst and the other analyst.

22 Q. Right, but --

23 A. The -- go ahead.

24 Q. I'm sorry. When the other two members
25 vote, [REDACTED], right, when they got this

1 sheet, were those two marked "circumstances surrounding
2 the present offense" and "poor institutional
3 adjustment," were those two marked when they got --

4 **A. They should have been.**

5 Q. Okay. And --

6 **A. I'm sure they were.**

7 Q. And are they voting to say yes, they agree
8 with everything? They -- they agree that those are the
9 reasons --

10 **A. I can't put myself in their minds and their
11 head. I assume that --**

12 Q. And that's what I'm trying to understand.
13 Like, when their vote -- is everybody agreeing on the
14 reason why it's being denied?

15 **A. I would say yes.**

16 Q. When you get a form from a panel that you
17 weren't on to vote and that's filled out, are you
18 looking at this second page to see what was marked in
19 determining whether or not you agree?

20 **A. Yes.**

21 Q. Okay. Are there occasions when you don't
22 agree?

23 **A. There's not been many. I'll just put it
24 that way. Because I can go back and look at the report
25 and understand why they've been checked.**

1 Q. You talked a little bit about post-hearing,
2 how the panel members have a conversation about the
3 hearing; is that correct?

4 A. Yes, ma'am.

5 Q. About how long do you-all talk about the
6 hearing?

7 A. Right after the immediate hearing?

8 Q. Uh-huh.

9 A. Not very long. Probably no more than ten
10 minutes. Five -- I guess, average, five minutes.

11 Q. And for the juvenile --

12 A. For the most part, yeah.

13 Q. And for the 590 hearings?

14 A. Longer.

15 Q. What do you talk about?

16 A. We talk about the case and the conduct, and
17 everything in general involving the offender.

18 Q. Do you-all go over the factors? The Miller
19 factors?

20 A. On these, yes. We make sure they've been
21 covered. We feel comfortable that we've covered them
22 in the hearing.

23 Q. Right. And, again, that's making sure
24 these -- the factors on Exhibit 1 have been covered?

25 A. Yes, ma'am.

1 Q. Do you -- do all the people who are
2 voting -- so if I understand you correct -- you get the
3 parole file the first time when you show up at the
4 hearing, correct?

5 **A. Yes, ma'am.**

6 Q. And you review the ones that you're
7 leading. And then at some point, you give it to the
8 next person on the panel?

9 **A. No. We have an extra copy for each person.**

10 Q. Oh, okay. Okay. So do all of the people
11 on the panel review the entire parole file before they
12 vote?

13 **A. They won't have the actual hard file, but**
14 **they'll have the prehearing report.**

15 Q. Okay.

16 **A. And if they want to look through that file,**
17 **they can obviously. Whoever is doing the interview has**
18 **the hard file. What I mean by the --**

19 Q. Okay. So when you say they all have a
20 copy, you're just talking about a copy of the
21 prehearing report?

22 **A. Prehearing report.**

23 Q. What about letters of recommendation?

24 **A. And they would have that too. Or be made**
25 **aware of it. If it's in the -- usually whoever is**

1 conducting the hearing would say there's letters on
2 behalf of the offender from Joe Blow and Susie Smith.

3 Q. So my question is, before the panel members
4 vote on that BAS, have they read the entire parole
5 file?

6 A. Everything that's in there?

7 Q. Yes.

8 A. In the folder part?

9 Q. The entire file -- you know, I don't want
10 to split hairs, right. Because I know that they could
11 be thick, right? They can have -- they have far more
12 in there than just the parole hearing report.

13 A. Right.

14 Q. Okay. So I want -- my question is, have
15 they read the whole file before they vote?

16 A. They've read the prehearing report and any
17 information they want to take from the file; they take
18 the file and look at it themselves. There's a lot of
19 stuff in there.

20 Q. Right. But the prehearing report --

21 A. I'm not going to say they read every
22 document in there.

23 Q. The prehearing report doesn't itemize
24 everything in the parole file, correct?

25 A. No.

1 Q. So --

2 A. Not every document.

3 Q. How would an individual analyst on a panel
4 know that there's 12 letters of recommendation in a
5 file without going through the file?

6 A. You're usually told by the -- whoever the
7 interviewer is. Just to let the panel know you've got
8 to have letters from -- like I said earlier, Susan
9 Smith, Joe Jackson, on behalf of the offender.

10 Q. So are those read before voting?

11 A. Not always. They're aware of them.
12 They're not read in detail.

13 Q. So there's no requirement that that
14 information be read before voting?

15 A. To my knowledge -- I don't know what you
16 mean by "requirement." There's not -- I've never seen
17 written down that everybody has to read each and every
18 word of a letter on behalf of the offender. At some
19 point in time, they do. They can read them if they
20 choose to at the hearing before we make a decision.

21 Q. Right. So --

22 A. But we make them aware of the letters.

23 Q. But isn't the relevant time to read the
24 contents of the file, in particular letters of
25 recommendation, before voting?

1 **A. They're made -- yes.**

2 Q. Okay.

3 **A. But they're made aware of those letters in**
4 **the file.**

5 Q. And then they choose whether or not they
6 want to read them?

7 **A. Right.**

8 Q. Okay. What is your practice? Do you
9 read --

10 **A. I try and read them. I scan them. Read**
11 **the heart of the letters. And use it for the offender.**
12 **Find out how they're related, and who they're related**
13 **to and why they're -- you know. Sometimes you can have**
14 **a file with 17 letters in it, you know.**

15 Q. Do you distinguish between letters of
16 recommendation and other letters that deal with, this
17 individual will have a position, a job, upon release or
18 a letter that's dealing with an actual innocence claim?
19 Do you treat those any differently than --

20 **A. No. I treat them all the same.**

21 Q. So when you -- when you --

22 **A. Try to be fair to everybody.**

23 Q. All right. Okay. So when you tell an
24 analyst there's letters of recommendation in the file,
25 is that a general term to include letters that --

1 A. I'll usually push them over. And if they,
2 you know, they know they exist. If they want to take
3 the time to read them at that time, they can do so.

4 Q. And I -- and I can appreciate that. But
5 what I'm getting at is, do you signal, hey, there's --
6 there's a letter in here about actual innocence.

7 A. Do I signal? No.

8 Q. Okay. You just say, here's some letters
9 that are in the file?

10 A. Right. Yeah.

11 Q. And you don't -- you can't sit here today
12 and say definitively that all the panel members have
13 read the entire file before they vote? They --

14 A. The entire file?

15 Q. Yes. Yes.

16 A. No.

17 Q. Or any percentage of the file, you -- it's
18 your understanding that they have the parole hearing
19 report, right? But beyond that, you don't know what
20 they've read?

21 A. Well, I can assume that the person at the
22 institution has gone back and -- they could have gone
23 back and looked at these reports in the computer
24 before. I don't know that.

25 Q. Have they ever indicated that --

1 **A. Maybe -- usually the analyst has not looked**
2 **at them either that I'm aware of.**

3 Q. Has the director ever indicated that
4 they've reviewed the file before the hearing?

5 **A. Not to my knowledge.**

6 Q. And the prehearing report is prepared by
7 the IPO, correct?

8 **A. For the most part. It's my understanding.**

9 Q. Do you ever review any underlying documents
10 that the IPO may have relied upon in preparing the
11 prehearing report?

12 **A. No. I don't think so. Maybe I don't**
13 **understand your question.**

14 Q. Well, to the extent that they are
15 relating or -- referring to other reports that are in
16 the file, because we talked about --

17 **A. Oh.**

18 Q. Do you ever, you know, go through all
19 those?

20 **A. Letters and whatever?**

21 Q. Well, all the -- all the individual things
22 in the parole file.

23 **A. At the time of the hearing?**

24 Q. Uh-huh.

25 **A. They're at least scanned, you know.**

1 Q. How much weight do you give to --

2 A. Some of those are unnecessary to do the
3 hearing with. I'll just put it that way. Some things
4 in the file you don't really need to conduct an
5 appropriate hearing.

6 Q. Okay. Like what?

7 A. I don't know. You got me. But I know
8 there is. There's so many things in all those files.

9 A lot of times they'll put -- the analyst
10 will have a -- the sentence and judgment, whatever you
11 call it legally.

12 Q. Uh-huh.

13 A. And you know they're in there, but you
14 don't look at them unless there's a restitution.
15 That's one of the stipulations for parole is release,
16 and you go back and look at that and see how much it is
17 and make them aware that they -- you know, one of the
18 stipulations for parole is you have to pay back \$1400.
19 Do you understand that. You know.

20 But I don't usually look at that particular
21 document in detail until I feel it's necessary.

22 Q. Okay.

23 A. Because I see it's part of the stipulations
24 of parole.

25 Q. Have there been occasions where a file in

1 one of the 590 hearings had a letter from an expert
2 regarding some of the Miller factors?

3 **A. I don't remember.**

4 Q. Would you give any additional weight -- or
5 what weight would you give an expert report that speaks
6 to the Miller factors?

7 **A. I would read it in detail and give it what
8 it deserves.**

9 Q. Would you give it any more weight than a
10 letter of a recommendation from a family member?

11 **A. Of the offender?**

12 Q. Uh-huh.

13 **A. I would try and treat them both the same,
14 equal. And I think probably if the person was a
15 professional, they probably should know a little bit
16 better than the family member. If that's their line of
17 work, per se.**

18 Q. Are you aware of any expert reports being
19 presented at any of the 590 hearings?

20 **A. I don't remember. I don't know for sure.**

21 Q. Does the board meet regularly?

22 **A. We have a monthly board meeting.**

23 Q. Do you-all discuss issues that have come up
24 in specific hearings?

25 **A. Sometimes. As I told you earlier on, we --**

1 sometimes we'll hand walk a file to another board
2 member, as to why we're doing the release, if it's a
3 violent crime. And try to let them know why we did
4 this and why we felt like they should be released. But
5 they don't have to agree with us though.

6 Q. Have there been occasions where you-all
7 have discussed the 590 hearings?

8 A. Just in passing.

9 Q. So it's not --

10 A. The individual hearings?

11 Q. Well, I mean, issues that are arising, the
12 Miller factors, the type of --

13 A. Yeah, I mean, in general office talk.
14 Speaking -- you know, but we've not had a meeting that
15 I can recall involving that particular issue.

16 Q. I'm trying to get a sense of what the
17 members, if anything, are discussing amongst themselves
18 about these 590 hearings.

19 Are you aware of any expert --

20 A. I don't think we've had a direct meeting
21 where the parole board members have got in a room and
22 just talked about -- about that particular issue. We
23 might have office talk where I -- where I had a
24 juvenile without life hearing today -- without parole
25 hearing today, but no details.

1 Q. And I'm not getting at that -- the fact
2 that it occurs. But how it's occurring and any issues
3 that are coming up in those hearings, are you talking
4 about --

5 **A. No. Not really. Generally speaking.**

6 Q. Is it your opinion that these hearings are
7 pretty much similar to the other parole hearings you're
8 doing?

9 **A. I put a little more -- I put -- I**
10 **shouldn't -- I'll put effort into everything, but I put**
11 **a little more effort into those hearings, I think, than**
12 **I do the others.**

13 Q. But is it -- is it presenting -- are they
14 presenting any additional challenges for you-all as the
15 board?

16 **A. No, not personally.**

17 Q. So the board feels like it's equipped to
18 handle these?

19 **A. I have no doubt about that.**

20 Q. Okay. And why is that?

21 **A. Because I know all the board members. And**
22 **they're all fair-minded people. And they'll do the**
23 **right thing in all their decisions.**

24 Q. Is that the sole reason why you think
25 you-all are equipped, because you-all are doing

1 the -- you are committed to doing the right thing?

2 A. That's a good reason to.

3 Q. I understand that, but any other reason?

4 A. There's other factors, you know. The
5 person that you're dealing with, they're human beings,
6 you know. You want to give them the benefit of any
7 doubts. You know, if we feel like they're not a risk
8 to the community, and it's fair to let them go, we'll
9 do that if everything's in place.

10 You know the board -- can I make a comment?

11 Q. Yes.

12 A. The parole board has a lot of
13 responsibility that the public doesn't realize. And
14 that's why -- we deal in risk every day. And then
15 we're fair to everybody. Everybody -- it will be these
16 offenders, or anybody else that comes before the board.
17 I have no doubt about that, so ... but that's what we
18 deal with is risk to the community and to the public.

19 Q. And I am not trying to suggest that the
20 board isn't doing that.

21 My question is that Miller requires
22 analysis of certain factors that get into the
23 psychological development of children, and I am asking
24 about the board's ability to analyze the factors that
25 are required under --

1 **A. I think everyone on the board has the**
2 **capability and the education to analyze all those**
3 **factors.**

4 Q. When you say "the education," do you mean
5 generally because they're educated people? Or because
6 they have training in psychology and childhood
7 psychology?

8 **A. None of us are psychiatrists and whatever.**

9 Q. Okay. So I guess what -- I'm just trying
10 to understand. Separate and apart from being
11 well-intended, educated individuals who are committed
12 to doing their job, do they have something in addition
13 to that that makes them qualified to do some of the
14 psychological analysis that's required under 590?

15 **A. I'm not a psychiatrist. But I'm saying**
16 **that experience in life attributes to a lot of the**
17 **decisions. And relating to people.**

18 Q. Okay. How do you-all determine the
19 rehearing date?

20 **A. Well, you can only go out five years. And**
21 **I guess that's a -- that's someplace -- that's in one**
22 **of the policies. I've never seen it personally. We**
23 **can go out as far as five years to re-hear. Then on**
24 **down two to five, four, three or two.**

25 Q. So what does --

1 **A.** That's just been the policy since I've been
2 here.

3 **Q.** So they can get a rehearing date between
4 two and five years?

5 **A.** Correct.

6 **Q.** What warrants a two-year rehearing date?

7 **A.** Say that again.

8 **Q.** Under what circumstances would you give a
9 two-year rehearing date?

10 **A.** Probably the behavior. The seriousness of
11 the crime. I mean, if they've done pretty well in
12 prison.

13 This one here that you're talking about,
14 obviously the seriousness of the crime was taken into
15 consideration. Someone lost their life. And the
16 behavior was taken.

17 **Q.** So does that mean --

18 **A.** Into consideration.

19 **Q.** What's the difference between a two-year
20 rehearing date and a five-year rehearing date?

21 **A.** Well, there's a lot of factors that go into
22 that. I guess discipline/conduct, and the seriousness
23 of the crime, as I just indicated.

24 **Q.** Uh-huh.

25 **A.** Programs, what programs are they taking,

1 other than being rehabilitated.

2 There's a number of factors that would go
3 into that. Is their conduct better than it was the
4 last time when we gave them -- you know, are they
5 improving their conduct. There's a zillion factors.

6 Q. Is any factor given more weight than
7 another?

8 A. Well, obviously we -- no. Probably not.
9 Probably equal. For the most part.

10 Q. What's considered poor conduct?

11 A. To get lots of violations in a short period
12 of time. And seriousness of the violations.

13 Q. What's considered a lot of violations?

14 A. I guess that's in the eyes of the beholder
15 sometimes.

16 I would say if you had more than four or
17 five violations within a year, that's -- you'd have a
18 conduct problem. And it depends on how serious those
19 violations are. There's so many scenarios here, you
20 know.

21 Q. Fair enough.

22 So if someone had -- you know -- who's been
23 in prison for 30 years, has 30 violations, is that
24 number in and of itself a lot or it just depends on --

25 A. Thirty years, thirty violations? I

1 guess -- again, it depends upon the eyes of the
2 beholder.

3 Q. Uh-huh.

4 A. I've seen offenders that's been in for
5 35 years, had zero violations; and I've seen offenders
6 that's been in for 1 or 2 years, had 40 violations.
7 You know?

8 Q. Uh-huh.

9 A. So every case is different.

10 Q. So do the board members have any uniformity
11 in determining what's considered poor conduct?

12 A. No, I don't think there's anything written
13 down on paper.

14 Q. So what you consider poor conduct, may not
15 be considered poor conduct by one of your fellow board
16 members?

17 A. I can assume that. And that's why
18 everybody looks at it. Everybody has a chance to look
19 at the file.

20 Q. So we talked about the different factors
21 that are considered, the seriousness of the crime,
22 conduct, programs completed. Can you think of anything
23 else?

24 A. Me?

25 Q. Yes.

1 A. No. No, ma'am.

2 Q. But there could be?

3 A. There could be.

4 Q. How often are you giving someone a
5 five-year setback?

6 A. Again, that depends upon the workload, the
7 caseload, the number of cases that you see in a certain
8 period of time. I don't know -- I don't understand the
9 word "often," I guess.

10 Q. Do you have a default? Do you start with
11 five? Do you start with two?

12 A. Depends upon the seriousness of the crime
13 I'd say.

14 Q. Okay. So for --

15 A. It might be if you had a drug charge, you
16 know -- well, probably wouldn't have a drug charge.
17 Could have. I mean, there's -- I -- there's not a
18 barometer for that, I guess, is the best way to put it.

19 Q. So for these juvenile life without parole
20 people --

21 A. Uh-huh.

22 Q. -- do they start with a five?

23 A. Do they start with a five? I wouldn't
24 necessarily say that. It depends upon the case. We
25 might want to re-hear them in three. It depends --

1 **there's so many scenarios and so many factors in each**
2 **case.**

3 Q. Does the board have to agree on the
4 rehearing date? Like, how do you-all -- how does that
5 get set? What if one thinks two, one thinks three, one
6 thinks four?

7 A. They can go back on this sheet and put
8 **three years and three years.**

9 Q. So the --

10 A. And then majority would rule.

11 Q. The majority rules?

12 A. Uh-huh.

13 Q. Okay.

14 A. If that's what the -- if that's what the
15 **final decision -- I mean, if that's what the board**
16 **determines. Majority rules.**

17 Q. And so would that require four votes every
18 hearing date?

19 A. Uh-huh.

20 Q. Okay.

21 A. It could be three -- you know, if I put --
22 **like on this one, five years, somebody else puts down**
23 **12 of, what, '19, three years, so whatever it is.**
24 **12/18, I guess. It would be a three -- three years.**

25 Q. Okay. How much weight is given to the

1 IPO's recommendation in the prehearing report?

2 A. I, personally? I see what their
3 recommendation is. I can't speak for every board
4 member. Sometimes I agree with it. Sometimes I don't.

5 Q. How often do you agree with it?

6 A. I hate to put a number on that. I'm not
7 sure. I agree with it quite often, but not all --
8 60 percent of the time. I don't know.

9 Q. Okay.

10 A. It's hard to give you -- we hear so many
11 cases.

12 Q. Well -- and I'm -- I'm referring to
13 agreement with parole or not parole. Not necessarily
14 rehearing date, but parole or not parole.

15 A. Right. Right. Often that's -- often
16 that's where the -- if the IPO says -- gives a date and
17 we look at the guidelines and we make a determination,
18 "we," being the board, we may not all agree. You know.
19 The analyst may give us reason to say we -- you know,
20 look at this and look at this. You know. Whatever.
21 Guideline dates.

22 There's a -- there's a lot of
23 decision-making that goes into that too. But I don't
24 always agree with the IPO's recommendation, if that's
25 your question. And the percentage is probably --

1 probably at least 50 percent of the time I do, but not
2 always. And we can have disagreements among the three
3 of us. And the board could end up agreeing with the
4 analyst over me with that recommendation. If they want
5 to. If he has a different date.

6 Q. What about in the context of these 509
7 hearings? How often do you-all agree with the IPO's
8 recommendation?

9 A. No, I've only done -- been around two or
10 three of them. I don't know if we went with the
11 recommendation of the IPO on all those or not to tell
12 you the truth.

13 Q. Are you aware of any 590 hearings, ones you
14 were involved in or not, where they didn't go with what
15 the IPO recommended?

16 A. I'm not aware.

17 Sometimes I'll never -- sometimes you never
18 see a file. If it gets to the board before it gets to
19 me. You understand what I'm saying?

20 Q. Yes.

21 A. So that's -- I'm not aware.

22 Q. About how long does it take to make it
23 through that process to get all the votes from the
24 other board members needed to finalize?

25 A. We tell the offender -- and I don't think

1 it takes us long normally. We tell the offender that
2 you'll hear something back in about six to eight weeks.
3 Gives us some leeway. Generally I would say -- and I
4 don't know this for a fact, but they probably hear back
5 within a month. I'm guessing. But we tell the
6 offender, you'll hear something back in about six to
7 eight weeks as to your hearing.

8 Q. So what happens after it's finalized?
9 Where's does the file and the paper go? How is that
10 communicated to the -- to the inmate?

11 A. One of the girls that handles the file --
12 there's so many of them back there. Once there's a
13 decision made, they find out the decision. They get
14 ahold of the IPO. I think. I'm not for sure about
15 this. They get ahold of the IPO at the institution.
16 And they tell her -- he or she what the hearing results
17 were. And at some point in time within the next week
18 or two, they call the offender out to their office and
19 give them the decision. That's my understanding of the
20 process.

21 Q. Okay. It's your understanding that the
22 offender is given the paper in person?

23 A. I don't know what -- I don't know what
24 paperwork they get.

25 Q. Okay.

1 A. But they're told what the results of the
2 hearing were. I can't tell you that.

3 Q. Do they have any -- is there any grievance
4 process that an inmate can go through if they're not
5 satisfied with the decision?

6 A. Well, yeah, oftentimes they can send in --
7 then they'll agree -- I've not seen too many of them,
8 but they can send in a complaint, I guess is what you
9 want to say, as to the hearing results. And there's a
10 word for that. And I drew -- drew a blank. I
11 apologize.

12 Q. There's no right to formally appeal it,
13 correct?

14 A. They can -- they can appeal. Yeah, there's
15 an appeal form. They all have the right to appeal.
16 And it will come back before the board. And they'll
17 put on there why -- what they're appealing. What the
18 institute -- why they're appealing something. And like
19 I said, if they felt like they got too much time or
20 whatever -- there's other appeals that come through
21 there too.

22 Q. So there's a form that's available for an
23 inmate to complete to appeal?

24 A. He or she can fill that out and send in an
25 appeal. Not just about that particular reason. There

1 could be other reasons also; that their guidelines are
2 wrong. They feel like they got -- there's a lot --
3 numerous factors they can send in an appeal on.

4 Q. So if they think it was a calculation
5 error --

6 A. Yes. They can send in appeal and say, I
7 think the numbers are wrong. It should be my outdate
8 or guideline date, CR date, whatever.

9 Q. Uh-huh.

10 A. There's -- they can -- they can appeal for
11 a lot of reasons. They want to go back to be with
12 their family, which I understand, you know. They have
13 a lot reasons they can appeal. They can appeal before
14 a hearing too or after, you know. There's a lot of
15 circumstances.

16 Q. Where's does that appeal form go?

17 A. Where does it go? The institution gets it
18 to us and we get in -- put in their file and it goes to
19 the board.

20 Q. So you review all appeals?

21 A. And that's a majority too. Board -- yes.
22 But there's a lot of different reasons that they can
23 appeal something. I mean, there's a lot of things that
24 they can appeal.

25 Q. So when you say it's a majority vote on the

1 appeal --

2 **A. Same as a hearing.**

3 Q. So the form comes in. Do you-all need to
4 talk about appeals? Is it put on your shelf? Like,
5 how does it get voted --

6 **A. It's put on our shelf, and we pass it on**
7 **just like any other hearing. And read. Read what the**
8 **appeal is. And read the file. See what's going on.**
9 **And either grant the -- grant or deny. You know. It's**
10 **usually for minor things though. You know. I mean,**
11 **there could be any number of reasons. Like I said, if**
12 **they want to go home. They have a sick parent at home.**
13 **They feel like they should be released.**

14 Q. Uh-huh. So --

15 **A. Any number of things you can get an --**

16 Q. So it doesn't have to be an established
17 ground for requesting an appeal. It can just be like,
18 I'm unhappy with your decision?

19 **A. Being incarcerated, I guess.**

20 Q. Uh-huh. And you-all will review all of
21 those?

22 **A. Correct. I mean, they fill out the form**
23 **theiirself. The offender does.**

24 Q. Okay. Have you-all gotten any appeals from
25 juvenile life without parole people?

1 A. Not to my knowledge, but I don't know. I
2 don't know.

3 Q. And when we talk about appeal, the appeal
4 is limited to a second review at the board, correct?
5 We're not talking about a court judicial review?

6 A. Right.

7 Q. Okay.

8 A. That they don't agree with the finding.

9 Most of them are for minor things, these
10 appeals. I consider them minor. And I'm sure they
11 don't. 'Cause I'm not the one incarcerated. But, you
12 know, most of them are -- they don't agree with what
13 the board's decision was. Or -- or they have some
14 other problems. There's multi numbers of reasons they
15 could appeal -- send an appeal to the board.

16 Q. How often is an appeal granted, let's say?

17 A. I can't answer that. I don't know.
18 Sometimes I never see the final on any of these.

19 Q. Do they appeal rehearing dates?

20 A. I've not ever seen one, no. To my
21 knowledge.

22 Q. Are you aware of any misconduct occurring
23 during parole hearings from the panel members?

24 A. Could you repeat that.

25 Q. Are you aware of any misconduct on behalf

1 of the panel members during parole hearings?

2 **A. No. Other than the deal that one of them**
 3 **was dismissed for it. I heard about it later, after**
 4 **the fact.**

5 Q. Uh-huh.

6 **A. I guess that's -- I assume that's what**
 7 **you're alluding to.**

8 Q. Well, that would be included, but I'm just
 9 saying any --

10 **A. No.**

11 Q. Okay. Were you ever involved in any of
 12 those hearings where that conduct occurred?

13 **A. No.**

14 Q. And just for the record, who are you
 15 referring to when you say that individual?

16 **A. Mr. Ruzicka, I guess.**

17 Q. Okay.

18 **A. Yes. Mr. Ruzicka.**

19 Q. Have you heard of any parole -- any parole
 20 board members or panel members saying any offensive
 21 things during hearings?

22 **A. No. What do you mean by "offensive?" To**
 23 **who?**

24 Q. To an inmate about an inmate, you know,
 25 during the hearing?

1 A. No.

2 Q. Okay.

3 A. I know the analysts, or the IPOs, or the
4 district administrator's accused me of that. They've
5 never -- that's -- there's usually only one member
6 there, you know, board member. You asked me about
7 other board members. I'm not aware of it.

8 Q. Have you ever used the term "terrorist" to
9 describe an inmate?

10 A. Have I?

11 Q. Uh-huh.

12 A. Ever used the term terrorist? I'll tell
13 what I did -- what did happen. There was a guy that --
14 after the hearing was over, not in front of him -- and
15 it was only in -- in joking. Of course, nowadays you
16 can't say anything. It's all too serious. There was a
17 guy that just took up Islam faith. And after his
18 hearing was over, he wasn't in the room or around and
19 I -- jokingly I looked to the analyst and I said, I
20 hope he doesn't become a terrorist. I said that.
21 Yeah.

22 Q. So who heard you say that?

23 A. Just the people in the room.

24 Q. Who were they?

25 A. Only in joking.

1 Q. Like, who were the, like, the analyst and
2 the victim --

3 A. No, the victim -- there was nobody else in
4 the room but the three of us.

5 Q. So just the panel members were there?

6 A. Yes, ma'am.

7 Q. When you say the three of us, you're
8 talking about the three panel members?

9 A. Yes. I'm trying to be honest with you
10 about that, okay.

11 Q. No, no, I'm just --

12 A. I did make that statement. I'll tell you
13 anything I've done. And it was only a joke at the
14 time.

15 Q. Uh-huh. Are you aware of any public
16 complaints that have been made about the 590 parole
17 hearings?

18 A. Public complaints?

19 Q. Uh-huh.

20 A. No, ma'am.

21 MS. JONES: Can we take a quick break.

22 (A break was taken.)

23 BY MS. JONES:

24 Q. You were on the panel for the hearing of

25 [REDACTED] --

1 **A. Yes, ma'am.**

2 Q. -- do you recall that?

3 [REDACTED]

4 [REDACTED]

5 **A. Yes, ma'am.**

6 Q. Did you review any documents relating to
7 his parole hearing in preparation for today's depo?

8 **A. Yeah, I did.**

9 Q. You did?

10 **A. I had a copy of this -- no, I did not. I**
11 **had a copy. Can I look? I can tell you. No. It was**
12 **the [REDACTED] case.**

13 Q. Okay. Do you have any, like, recollection
14 of that hearing?

15 **A. No. I'll be honest with you, I don't.**

16 Q. Okay.

17 **A. I can't remember what happened yesterday.**
18 **This was back in December of '16.**

19 Q. So you learned that you were on his panel
20 on the day of the hearing?

21 **A. Correct.**

22 Q. Which was December 13 of 2016?

23 **A. Yeah.**

24 Q. Do you know who else was on the panel?

25 **A. No. I can't tell you who the analyst was,**

1 because I can't make out his or her -- it's not her.

2 His initials.

3 Q. [REDACTED]?

4 A. It could be true.

5 Q. Okay.

6 A. But I'm not -- I'm not going to say yes.

7 That looks like that might be his initials.

8 Q. Okay. And the parole supervisor?

9 A. I don't -- well, we were -- what
10 institution is that?

11 Q. [REDACTED].

12 A. Yeah, you're right. That's correct.

13 Buerck, is -- I think he pronounces it,
14 Buerck.

15 Q. Okay. Thank you.

16 You were provided his parole file on that
17 day; is that correct?

18 A. Correct.

19 Q. And did you review that file prior to the
20 start of the hearing?

21 A. Yes.

22 Q. Okay. About how much time do you think you
23 spent on that -- reviewing that file?

24 A. I'm gonna guess 10, 15 minutes, 20 minutes.
25 No more than 20 minutes. Probably. Those -- those --

1 these are relatively -- not very bill files for --

2 Q. Yeah. I have his file.

3 A. Not much happened. So it doesn't take long
4 to review. I mean, he was a juvenile. That's why it
5 didn't take as long as normal.

6 Q. If I represent that that's his parole file,
7 would you consider this --

8 A. The whole parole file?

9 Q. Uh-huh.

10 A. It might be. Yeah. It could be.

11 Q. Okay. What do you consider that? A lot or
12 a little?

13 A. A little compared to some.

14 Q. Okay. And this is something that you could
15 get through in 20 minutes?

16 A. I could if I looked at all the right
17 places, yeah.

18 Q. And for the record, I'm representing the
19 documents that I printed out that were produced --

20 A. I don't know if all those files were in
21 that file. But I don't know.

22 Q. Okay. Well, I'm just basing it on all of
23 what was produced to us in the production as being part
24 of the file.

25 A. Yeah, I assume that's what they were.

1 Q. Do you have any idea of how many hearings
2 you heard on that day?

3 A. No.

4 Q. Did you travel to the facility that day?

5 A. Yes.

6 Q. Okay. About how --

7 A. I think so. Let me think about that. I'm
8 sure I did. I -- I don't know.

9 Q. Is that one of the ones that you would do
10 the day of or the night before?

11 A. If we went down there, we probably -- if we
12 went down, Buerck was there. But he could have been on
13 video too. I don't remember if we traveled there or
14 not. I think so though.

15 Q. It was an in-person hearing.

16 A. Yeah. Well, we would have traveled there
17 then.

18 Q. Do you -- I think I just asked you this.
19 Do you know how many hearings you had on that day?

20 A. No, ma'am. You asked me. I'm not sure.

21 Q. Do you know about how long his hearing
22 lasted? Mr. [REDACTED]?

23 A. I'm going to guess. It's merely a guess on
24 my part.

25 Q. Uh-huh.

1 **A.** Thirty, twenty-eight, thirty,
2 thirty-five minutes. Thirty minutes. Thirty,
3 thirty-five minutes. That's a guess only. I don't
4 know.

5 Q. Do you think that that's typical for the
6 590 hearings?

7 **A.** Well, I don't know what's typical, because
8 I haven't done that many of them. I don't know what
9 the average is.

10 Q. And yesterday we produced -- we had a
11 supplemental document production. We produced the
12 hearing transcripts.

13 MS. JONES: Did you-all get those?

14 MR. CRANE: Yeah.

15 MS. JONES: And to the extent necessary, I
16 may refer to that in today's depo.

17 (Deposition Exhibit No. 6 was marked for
18 identification.)

19 BY MS. JONES:

20 Q. I'm going to hand to you Exhibit 6, which
21 is plaintiff's Document 69 through page 118, which is a
22 transcription of the audio recording of [REDACTED]'s
23 hearing.

24 **A.** Uh-huh.

25 Q. If you want to flip through those pages

1 quickly or however much time you want to spend. I'm
2 going to ask you some things about that hearing. And
3 maybe you can refer to the transcript as we're going
4 through the questions --

5 **A. Sure.**

6 Q. -- to refresh your recollection.

7 MR. CRANE: Are you going to tell who the
8 names are or give him a key?

9 MS. JONES: You know what, I didn't bring
10 the -- I have one copy, if you want to make
11 photocopies.

12 **A. This is the hearing for what, ma'am? This**
13 **is the hearing for what?**

14 (Deposition Exhibit No. 7 was marked for
15 identification.)

16 BY MS. JONES:

17 Q. His parole hearing, Mr. [REDACTED].

18 **A. I don't remember a lot of this.**

19 Q. And that's why I brought the transcript.

20 **A. So this is the hearing, the hearing that**
21 **was recorded on Mr. [REDACTED]?**

22 Q. Correct.

23 **A. That I participated in?**

24 Q. Correct.

25 **A. Okay. How do you determine who is panel**

1 **number one and --**

2 Q. He's making a copy of the key?

3 MR. CRANE: Because these normally wouldn't
4 be public, they've redacted everyone's name.

5 THE WITNESS: Okay.

6 (An off-the-record discussion was held.)

7 BY MS. JONES:

8 Q. My first question relates to the start of
9 the hearing. It appears that there was some comment, a
10 statement from the [REDACTED] prior to the time
11 that Mr. [REDACTED] and his delegate were brought in.

12 A. **I don't remember the circuit attorney**
13 **thing. They were at the hearing?**

14 Q. Yes.

15 You'll note that on page 9, on line 8,
16 that's where they talk about -- that's when they
17 brought the offender into the room. Him and his
18 delegate. So you'll note that the hearing started
19 prior to the time he was brought in?

20 A. **All right.**

21 Q. Okay. Do you see that the circuit attorney
22 made a statement to the board panel, let me say, before
23 he was brought in?

24 A. **I see that. But I'll be honest with you, I**
25 **don't remember that.**

1 Q. Do you have any reason to think that that
2 is inaccurate?

3 A. No, ma'am. I just don't remember it.

4 Q. Fair enough.

5 Is there a reason why you would allow the
6 prosecutor to speak to the panel prior to the time
7 Mr. [REDACTED] was brought into the room?

8 A. I do not know that reason, and I don't
9 remember him being there.

10 Q. I'm sorry, what was the last part? You
11 don't remember what?

12 A. I don't remember the circuit attorney being
13 there. Obviously you say he was.

14 Q. The [REDACTED] doesn't address the
15 590 factors in her statement; is that a fair statement?

16 A. Are you talking to me, ma'am?

17 Q. Yes. So you'll see her statement to
18 begin --

19 A. Can I read that? 'Cause I don't remember
20 the circuit attorney being there.

21 Q. Yes. It begins on page 7 at line 17.

22 A. [REDACTED] [REDACTED]

23 Q. [REDACTED]

24 [REDACTED] [REDACTED] [REDACTED].

25 THE WITNESS: I do not remember her being

1 there. I apologize.

2 You said on page 7, what, please?

3 BY MS. JONES:

4 Q. Line 7.

5 **A. Uh-huh. And names?**

6 MR. CRANE: You're panel member one, for
7 the record.

8 THE WITNESS: Okay. Okay.

9 MR. CRANE: If you want to -- there's a
10 copy of the key sheet.

11 THE WITNESS: Okay. Thank you. Okay.

12 Page 7 you referred to?

13 BY MS. JONES:

14 Q. Yeah. Page 7 line 17 is where she starts
15 to make her statement.

16 **A. I don't remember that. I'm sorry. If it's**
17 **so, it's so.**

18 Q. And my question is that her statement
19 doesn't address the 590 factors?

20 **A. [REDACTED] [REDACTED] [REDACTED]**
21 **[REDACTED] [REDACTED]**
22 **[REDACTED] [REDACTED].**

23 Q. So do you agree with my summary of -- my
24 characterization that her statement doesn't address all
25 the Miller factors?

1 **A. Correct, I would agree with that.**

2 **Q. And by Miller factors, I mean, not to use**
3 **them interchangeably, but the Senate Bill 590 factors.**

4 **A. Right. I agree. She didn't say anything**
5 **about them.**

6 **Q. Is there a reason why she would be allowed**
7 **to speak before Mr. [REDACTED] was brought into the room?**

8 **A. I cannot answer that for you. I guess that**
9 **was the process at the time that I was aware of.**

10 **Q. Do you know who was present in the room at**
11 **the time when she spoke to the panel?**

12 **A. Well, by looking at this, I could probably**
13 **tell you it would have been the rest of the panel.**

14 **Q. Okay.**

15 **A. Which was Mr. [REDACTED]. I'm**
16 **not sure if there could have been a correctional**
17 **officer in there also. It's a possibility. Or another**
18 **staff observing. They could have been in there. I**
19 **don't know.**

20 **Q. And I'll represent that there was someone**
21 **from the victim advocacy group, but there was no one**
22 **from the victim's family in the room.**

23 **A. Okay. I don't remember. You're saying**
24 **that there was somebody there from -- was it Kim Evans?**

25 **Q. I'm saying -- Kim Evans?**

1 **A. She's in charge of the victim's advocacy.**

2 Q. Right. Well, somebody from that office was
3 there.

4 **A. Yeah, they could have been. I don't**
5 **remember.**

6 Q. So you'll note on page 4, starting on line
7 24, the IPO says, "I'm not the IPO here. And
8 Mr. [REDACTED] likes me, too. I mean, you're going to be
9 glad you put me here."

10 **A. Just one second. I'm sorry. I'm not with**
11 **you. On page 4?**

12 Q. That's on page 4, like line --

13 **A. Okay.**

14 Q. It's line 24 and it goes on to the first
15 line of the next --

16 **A. And I'm panel member number one, right?**

17 Q. Yes.

18 **A. Okay. (I don't recall that.**

19 Q. Okay. So you don't what that --

20 **A. I don't know what that means. No.**

21 Q. Okay. And I believe you testified earlier
22 that IPOs are not typically at the hearing?

23 **A. Usually the district administrator is**
24 **there. I mean, it can be an IPO, I guess. I don't**
25 **know what the policy is on that.**

1 Q. So when you talk about --

2 A. Mr. [REDACTED] was there. He's the district
3 administrator.

4 Q. Okay. So there are two then there, right,
5 Buerck and --

6 A. I don't remember this lady being there to
7 tell you the truth.

8 Q. Okay.

9 A. The IPO lady.

10 Q. So it's unusual to have both the district
11 manager -- supervisor and --

12 A. It's not the norm. I'll just put it that
13 way. That I've been involved with.

14 Q. Did you use -- or do you use any specific
15 document to kind of guide you through the hearing?

16 A. Yeah. The prehearing report. Correct.
17 For the most part.

18 Q. So Exhibit 8 is the prehearing report,
19 which is Bates number AG0002447 to 2454.

20 (Deposition Exhibit No. 8 was marked for
21 identification.)

22 BY MS. JONES:

23 Q. Do you recall this report?

24 A. Yes.

25 Q. And who prepared this report?

1 **A.** Probation and Parole officer Miss [REDACTED],
2 and the unit supervisor is Ms. Shankle. Probably Miss
3 Hobeck did.

4 Q. Okay. Do you recall that Mr. [REDACTED]
5 maintains his innocence of this crime?

6 **A.** No.

7 Q. So if you go to page 12 in the transcript,
8 around line 12 -- I'm sorry, around line 14 of page 12.
9 In that section where you are talking, you asked him to
10 tell you a little bit about the crime?

11 **A.** Yes, ma'am.

12 Q. And you'll note that starting on line 25,
13 is the first time where he talks about maintaining his
14 innocence.

15 **A.** I don't -- I see it now, but I don't recall
16 it at the time.

17 Q. So did the fact that he maintained his
18 innocence have any impact on the way the hearing was
19 conducted?

20 **A.** No.

21 Q. Did it have any impact on whether or not he
22 was going to be given -- granted parole?

23 **A.** No.

24 Q. And why is that?

25 **A.** Just didn't have any impact. I can't speak

1 **for the other two panel members. It didn't with me.**

2 Q. Are you aware that 590 contemplates that
3 that should not be used against someone; the failure to
4 take accountability should not be used against someone
5 maintaining their innocence?

6 A. I might have recalled reading that. I
7 **can't say directly that I knew that.**

8 Q. On page 16 --

9 A. **Yes, ma'am.**

10 Q. -- starting around line 11 --

11 A. **Sixteen?**

12 Q. Page 16, line 11 reads, "You brought up the
13 fact apparently that you were physically, mentally,
14 sexually abused growing up, but stated you did not
15 commit the current offense. So it had no bearing on
16 your -- it has no bearing on your parole release."

17 Did I read that correctly?

18 A. **(Witness reviews document.)**

19 **If I said it, I said it.**

20 Q. So that means that you were not considering
21 that childhood abuse in, you know, evaluating his
22 parole petition?

23 A. **No, I would disagree with you there.**

24 Q. What does it mean?

25 A. **It means that is not -- just what it says.**

1 I mean, that you brought up the fact, apparently, that
2 you -- I told this to the defendant, the offender.
3 Apparently -- you brought up the fact, apparently, that
4 you were physically, mentally, and sexually abused
5 growing up. In general, it does not -- it did not have
6 a bearing on the hearing. Personally? The other -- I
7 can't speak for the other two. It could have had a
8 bearing. And it might have had a bearing on me, too.
9 But generally speaking -- generally speaking, no.

10 Q. Generally speaking --

11 A. Generally speaking, it had no affect on the
12 parole hearing, in general terms.

13 Personally, you know, that's different. I
14 can't speak for the other two board members.

15 Personally, I had to -- I knew about it and what was
16 going on.

17 Q. When you --

18 A. The fact that -- when somebody's high on
19 drugs or intoxicated and commits a murder, that's not a
20 defense for murder.

21 Q. Okay.

22 A. And because this happened to this person,
23 unfortunately, I mean, that's not a defense for murder
24 either.

25 Q. I understand that --

1 A. So it didn't affect my overall thinking on
2 it.

3 Q. But it --

4 A. Because that's happened to him.

5 Q. Let me follow up with, did you consider it
6 in doing the SB 590 analysis, the fact that he was
7 physically, mentality, and sexually abused?

8 A. Did I?

9 Q. Yes.

10 A. I knew he was, obviously. It was in the
11 equation.

12 Q. I'm asking you, was that part of the
13 analysis you did when considering the 590 factors?

14 A. Yeah, I think so.

15 Q. So when you say it has no bearing on your
16 parole release, what does that mean?

17 A. The fact that this unfortunately happened
18 to this gentleman -- I mean, because this happened to
19 him, and this crime was committed, that means that, you
20 know, it's not a defense for him committing the crime,
21 that he was sexually abused or physically or mentally
22 abused. It was unfortunate.

23 Just like I would tell somebody -- as I
24 indicated before in my example, if somebody murdered
25 somebody because they were intoxicated, that's not a

1 **defense neither. Unfortunately it happens.**

2 Q. Okay. And in here it's not being presented
3 as a defense to the crime, but a factor to be
4 considered in the parole release. And you're saying
5 here in the transcript, you said, "it has no bearing on
6 your parole release. It's not saying it has no bearing
7 on --

8 A. Well, yes, in fact, it did. It
9 personally -- on a personal note, but generally
10 speaking, not.

11 Q. So this is -- this is incorrect. What you
12 said here --

13 A. Well, I said it. So I'm not going to say
14 it's incorrect.

15 Q. But you're saying you still -- you still
16 considered it -- you still considered that abuse in
17 doing the 590 analysis?

18 A. Yes.

19 Q. Okay. How do we know that? I mean, other
20 than you saying that, is that reflected anywhere else?

21 A. No. And I'm telling you that's the way it
22 is. It's the truth.

23 Q. I want to go back to the prehearing report,
24 which is Exhibit 8.

25 Did you essentially use this prehearing

1 report to go through -- to conduct the hearing?

2 **A. Yes. For the most part.**

3 Q. And if you look at the second page, the
4 first, the fourth full paragraph that starts with "when
5 interviewed by this officer."

6 **A. Yes, ma'am.**

7 Q. Okay. If you can review that paragraph for
8 a second, and I'm going to ask you a question.

9 **A. Sure. (Witness reviews document.)**

10 **Yes, ma'am.**

11 Q. Okay. So when you made that statement that
12 we were just referring to from the hearing about the
13 abuse, are you just -- are you just reading from --

14 **A. I picked it out of here.**

15 Q. Okay. Okay.

16 **A. I probably read that.**

17 Q. So is that the reason why you stated it has
18 no bearing on his parole release?

19 **A. It could have been, but I -- you know.**

20 **That's probably where I got that information from.**

21 **Recalled that information.**

22 Q. And do you believe that to be a correct
23 statement, that it has no bearing on his parole
24 release?

25 **A. In general, like I said earlier. Because**

1 **this unfortunately happened to him growing up. I mean,**
2 **he still committed the crime. But my personal? No.**

3 Q. And I'm sorry for keep -- repeating this.
4 But I want to make sure I understand your answer.

5 It says he was abused. And then it also
6 says that that's not going to be considered,
7 because it's stated that he did not commit the offense.
8 So, therefore, it has no bearing on his parole release.
9 Right? We're talking about whether or not this is a
10 factor that should be considered under his parole
11 release. And you're saying that you did consider it
12 for his parole release?

13 A. It came up in the hearing, but I didn't
14 just -- consider just this (indicating.) Just like I
15 said to you earlier, generally speaking, it's like my
16 previous example. You know, intoxication of alcohol or
17 drugs is not a reason -- not a defense to commit a
18 crime. It's unfortunate that this happened to this
19 gentleman. But I didn't base it solely on this
20 (indicating.)

21 Q. So, you know, I can appreciate your attempt
22 analogize this to intoxication.

23 A. Uh-huh.

24 Q. But this is dealing with one of the factors
25 set forth in Senate Bill 590 that says "must be

1 considered" -- right -- "for parole release?"

2 **A. Uh-huh.**

3 Q. Right. And I'm trying to get an
4 understanding of whether or not you considered it.
5 Because as we --

6 **A. I did consider it. Yes.**

7 Q. Okay. So this statement is just wrong. I
8 mean, I get that's what was said, but it's not an
9 accurate statement as to what should be considered?

10 **A. I would say yes. The way it was**
11 **interpreted.**

12 Q. Do you recall talking about any of the
13 circumstances or details about that abuse after this
14 point in the hearing?

15 **A. I don't recall. I mean, if I'm not telling**
16 **you right ...**

17 Q. So if you did consider it, would it be
18 something that you would ask follow-up questions on?

19 **A. If I did consider it, it would it be**
20 **something I'd ask follow-up questions on.**

21 Q. Would you get into the abuse that he
22 suffered as a child?

23 **A. Sometimes, in some cases, I do; and**
24 **sometimes I don't.**

25 Q. So why wouldn't you -- why -- when wouldn't

1 you consider it?

2 **A. I don't know, 'cause every case is**
3 **different.**

4 Q. So for --

5 **A. I'm not saying I didn't consider it. Maybe**
6 **I did, and maybe I didn't.**

7 Q. So when you say you --

8 **A. But I did consider it when I read the**
9 **report.**

10 Q. Okay. Would -- is that something you would
11 ask questions about of an individual who was sentenced
12 to life without parole as a juvenile who was having a
13 hearing pursuant to Senate Bill 590?

14 **A. I don't know.**

15 Q. Did you receive any training or instruction
16 about considering childhood abuses for those offenders
17 who maintain their innocence?

18 **A. Not directly, no.**

19 Q. Did you -- did you receive any training as
20 it relates to those juveniles who maintain their
21 innocence?

22 **A. Those that maintain their innocence?**

23 Q. Uh-huh.

24 **A. No.**

25 Q. Okay. So is it fair to say that a

1 significant portion -- a notable portion of the hearing
2 focuses on accountability and acceptance of their
3 behavior, of the crime that they've committed?

4 **A. Could you repeat that.**

5 Q. Would you say that that is a focal point of
6 a hearing, whether or not the inmate had accepted
7 responsibility for the crime?

8 **A. What is the focal point?**

9 Q. Whether he's accepted responsibility for a
10 crime; is that something that you --

11 **A. Oh, no. I'm sorry. I misunderstood. No.**

12 Q. No?

13 **A. No.**

14 I mean, maybe I don't understand what
15 you're asking me.

16 Q. In these parole hearings --

17 **A. I would take into consideration -- if he**
18 **said he was innocent of the crime, I would not hold**
19 **that against him. If that's what you're asking me.**

20 Q. Well, I was asking, you -- you typically
21 ask these inmates whether or not they accept
22 responsibility for their crime, correct?

23 **A. Yeah, for the most part.**

24 Q. And that's something that you factor into
25 whether or not to grant parole, correct?

1 **A. For the most part.**

2 Q. So the next question is: For those
3 individuals who maintain their innocence, they don't
4 accept responsibility for the crime that they were
5 charged with?

6 **A. And the question was?**

7 Q. Is that held against them in any way?

8 **A. No. No.**

9 Q. Okay.

10 **A. Which is what I was trying to get around**
11 **to.**

12 MS. JONES: I have an Exhibit No. 9.

13 (Deposition Exhibit No. 9 was marked for
14 identification.)

15 BY MS. JONES:

16 Q. Exhibit 9 is a letter from
17 Paul [REDACTED], Bates number AG0002482, which
18 supports Mr. [REDACTED] innocence claim.

19 **A. Uh-huh.**

20 Q. Do you recall reviewing that letter?

21 **A. I think I did, but I can't recall it**
22 **directly. It was some time ago. If it was in the**
23 **file, I read it.**

24 **Can you give me a minute to read it?**

25 Q. Sure.

1 **A. (Witness reviews document.) Okay.**

2 Q. Do you recall reading that letter before
3 you voted on whether to grant or deny parole?

4 **A. No, I don't know. I don't know. I think I**
5 **did, but I don't know for sure. I'm not going to tell**
6 **you something I don't know for sure.**

7 Q. Would that letter -- what amount of weight
8 would you have given to that letter?

9 **A. Quite a bit of weight.**

10 Q. Do you find it to be credible?

11 **A. I don't know how you measure that. I would**
12 **certainly have taken it into consideration.**

13 Q. Do you find the letter to be credible?

14 **A. I have no reason not to.**

15 Q. Would that be a letter that you would point
16 out to the other panels members to read?

17 **A. If, in fact, I read it, I probably would**
18 **have. They probably would have been made aware of it.**

19 Q. So it was in his parole file --

20 **A. Uh-huh.**

21 Q. -- right? And --

22 **A. I assume it was. I don't remember the**
23 **letter, like I told you earlier.**

24 Q. But if it was in his parole file, you would
25 have read it?

1 **A. More than likely.**

2 Q. But you don't know for sure?

3 **A. I don't know for sure.**

4 Q. And you don't know whether or not you
5 pointed that out to the other panel members?

6 **A. Not for sure.**

7 Q. You described Mr. [REDACTED] as an aggressive
8 person. Do you recall that?

9 **A. I do not.**

10 Q. If you look at page 21 of the transcript,
11 the second full paragraph, you'll see -- you conclude
12 that, "so you are kind of an aggressive person I would
13 say."

14 Do you see that?

15 **A. Yes, ma'am.**

16 Q. What's the basis for you labeling him as an
17 aggressive person?

18 **A. Well, just being involved with the mere
19 crime that occurred, you know.**

20 Q. The offense that he was convicted of?

21 **A. And also he stabbed an inmate with a
22 homemade knife.**

23 Q. So those two things would be the reason why
24 he was labeled aggressive?

25 **A. I would say that's pretty aggressive, any**

1 **time you assault someone.**

2 Q. Does the circumstances of that assault
3 matter, the stabbing matter?

4 A. Well, it's a behavior problem. Conduct.

5 Q. Again, do the circumstances matter? For
6 example, if he was acting in self defense, does that
7 matter --

8 A. Well, sure.

9 Q. -- in determining whether or not he was --

10 A. It could, other than the fact that he
11 probably shouldn't have had the homemade knife in the
12 first place.

13 Q. So possession of a homemade knife makes you
14 aggressive?

15 A. Well, in general terms, probably not. But,
16 you know, obviously there was a reason he had the
17 knife.

18 Q. So when you say "aggressive," you mean --
19 that could be a relative term. Aggressive as it
20 relates to someone who is incarcerated?

21 A. Could be for anybody.

22 Q. Anybody. So the circumstances -- his
23 circumstances don't factor into the label of being
24 aggressive?

25 A. Repeat that, please.

1 Q. His circumstances don't factor into him
2 being labeled as aggressive?

3 **A. That it was in self defense?**

4 Q. That it was in self defense. We're talking
5 about an individual --

6 **A. Well, first of all, an inmate's not**
7 **supposed to have a homemade knife in prison.**

8 Q. Right. And so -- that's not my question
9 exactly.

10 **A. Okay.**

11 Q. Right. I mean, I get what you're saying
12 that --

13 **A. Okay.**

14 Q. But, you know, you said that the stabbing
15 of the -- of someone, the assault is a part of the
16 reason why you have labeled him aggressive. And I'm
17 talking about the circumstances of that incident. Are
18 those considered, when you give him that label of being
19 an aggressive person?

20 **A. This particular incident? It shows being**
21 **assaultive to me. I guess I don't understand your**
22 **question.**

23 Q. My question is, you labeled him aggressive,
24 correct?

25 **A. Yes, ma'am.**

1 Q. And you said you based it on two things.
2 The offense that --

3 **A. Occurred.**

4 Q. -- that got him incarcerated back in [REDACTED],
5 and the assault?

6 **A. Yes, ma'am.**

7 Q. I'm saying, do the circumstances of the
8 assault matter at all when you are --

9 **A. To some degree. I mean, when you're**
10 **incarcerated things --**

11 Q. Okay.

12 **A. Hate to say it; things like that happen.**

13 Q. Okay. Exactly. Exactly.

14 And to the extent he was acting in self
15 defense, does that have any impact on whether or not
16 you labeled him as aggressive?

17 **A. Yeah.**

18 Q. And even though he represented and stated
19 that he was acting in self defense, did you find
20 that -- his statements to be credible?

21 **A. I had no reason not to.**

22 Q. So even though he was acting in self
23 defense, you still --

24 **A. He was still being aggressive.**

25 Q. Are there any circumstances, when that

1 particular assault could occur, and the person not be
2 labeled aggressive?

3 **A. Probably not.**

4 Q. Okay. So stabbing someone is always --

5 **A. I don't recall the exact thing that went on**
6 **here without reading all this. You know, he had a**
7 **homemade knife obviously.**

8 Q. Uh-huh. So if you continue on page 21 and
9 at line 17, he explains what happens.

10 **A. Okay. I've read that, ma'am.**

11 Q. Okay. So you said that you had no reason
12 to not believe his statements, correct?

13 **A. I believe the statement.**

14 Q. Okay.

15 **A. I mean, that's what he told us.**

16 Q. Okay. And in that statement he says that
17 someone was attacking him, and he took the knife from
18 that person?

19 **A. Uh-huh.**

20 Q. And he was out numbered, and so he was
21 defending himself with the knife?

22 **A. Yes, ma'am.**

23 Q. Okay. That supports your position of
24 labeling him as an aggressive person?

25 **A. He took part in the fight. He could just**

1 as well have left, you know. I still maintain he's an
2 aggressive person. There was a reason why those other
3 people were there.

4 Q. You'll note that the majority of the
5 transcript mirrors the prehearing report?

6 A. Yes, ma'am.

7 Q. And that, you know, there were a number of
8 times when you're reading that directly from the
9 prehearing report at the hearing. Is that typical?

10 A. Pretty much so.

11 Q. Okay. And so you'll note that there's a
12 section in the prehearing report at the
13 second-to-the-last page in the prehearing report. It's
14 Bates labeled 2453, called social family history.

15 A. Yes, ma'am.

16 Q. You didn't ask him any questions or even
17 address that section when you were interviewing him at
18 the hearing. Do you recall that?

19 A. I don't recall that.

20 Q. Is there a reason why you wouldn't address
21 those social family history issues?

22 A. No. Not really. Sometimes it happens. In
23 any hearing, you skip over certain parts of the report,
24 so whatever, it could have been -- could have been an
25 innocent mistake.

1 Q. Okay. But in a 590 hearing where that's
2 one of the factors that you are to consider in granting
3 parole or not, wouldn't that be something important to
4 cover?

5 A. It would be. And somebody else on the
6 panel may have covered it. I don't know.

7 Q. Well, we have the transcript.

8 A. I understand that.

9 Q. Okay.

10 A. I don't recall skipping over this section,
11 if that's what you're asking me.

12 Q. And you were the one conducting the
13 hearing, correct?

14 A. Initially.

15 Q. Okay. And so what is your responsibility
16 as the person conducting the hearing?

17 A. To oversee the hearing in general.

18 Q. I mean, are you supposed to ask the
19 significant -- the main questions that need to be
20 answered in order to consider the parole petition?

21 A. For the most part, yes, ma'am.

22 Q. So would that be on --

23 A. There could be follow-up questions from the
24 other panel members, also.

25 Q. So follow-up questions --

1 **A. If I missed something.**

2 Q. Okay.

3 **A. I ask them if they have any questions.**

4 Q. Okay. So you'll note your part of
5 conducting the hearing went through page 28, and then
6 the second panel member started with some questions.

7 **A. Who was Mr. [REDACTED]. Page 28, ma'am?**

8 Q. Yeah, that's where he -- the second one
9 starts.

10 **A. Okay.**

11 Q. And he goes through about page 32. And
12 you'll note that they don't ask any questions about it
13 either.

14 **A. (No response.)**

15 MR. CRANE: I think the last thing she said
16 was, "you'll note that."

17 MS. JONES: Well, he said that it's
18 possible that another panel member asked questions
19 about that social and family history. And I want to go
20 back to section 28.

21 **A. And I don't remember it. That's why I'm**
22 **reading here. I don't remember whether they did or**
23 **not. I'm still with panel -- with Brian George here.**

24 MR. CRANE: So just to clarify, you're
25 asking him to read that section and tell you whether or

1 not he sees anyone ask a question about that?

2 MS. JONES: Well, based on his answer, he
3 said he doesn't know. It could have been a second
4 panel member.

5 MR. CRANE: Sure.

6 MS. JONES: So I'm --

7 MR. CRANE: I'm just clarifying. You want
8 him to confirm that the transcript doesn't have a
9 question from the second panel member about that topic?

10 MS. JONES: Yeah, I want to confirm that he
11 was not asked about the social and family history --

12 MR. CRANE: Okay.

13 MS. JONES: -- during the hearing.

14 **A. I don't see where he did, Mr. [REDACTED].**

15 BY MS. JONES:

16 Q. Okay. And you'll note in the prehearing
17 report, under that section, they talk about him having
18 a rough childhood and being abused by his mother's
19 girlfriend and being given away by his father. Would
20 those be the types of issues that you would ask
21 questions about in order to do a 590 analysis?

22 **A. It probably should have been. I now know**
23 **that I -- apparently I did not. It was an oversight on**
24 **my part perhaps, but I don't recall.**

25 Q. Do you recall that he had a delegate --

1 A. I read this. I knew of this information.

2 Go ahead, ma'am.

3 Q. Okay.

4 A. Sorry.

5 Q. You're aware that he had a delegate there?

6 A. Well, I am since I read the reports. It's
7 been so long ago.

8 Q. Is any of this coming back to you, looking
9 at the transcript?

10 A. Well, some of it.

11 Q. I mean, I understand you see hundreds of
12 them.

13 A. Some of it is. Not all of it.

14 Q. Okay.

15 A. You know, that's why I amazed when you
16 brought the [REDACTED] in at the beginning,
17 because I didn't remember that at all.

18 Q. Do you -- do the panels typically ask
19 delegates questions?

20 A. Normally for the ones that I've done in
21 that last -- over two years, normally not. On rare
22 occasions, they do. I'll ask -- I'll ask -- and
23 sometimes I don't ask. Usually we do not question the
24 delegates. We just let them have their say.

25 Q. And that's the same in all parole hearings,

1 without regard to whether they were originally
2 parolable or a 590 hearing?

3 A. Yes, ma'am. For the most part.

4 Q. And then you'll note that Mr. [REDACTED] was
5 given the opportunity to speak as well.

6 A. Only at hearings. Any particular place
7 that you're talking about? At the end -- toward the
8 end of the hearing?

9 Q. Yeah.

10 A. We usually ask if they have anything else
11 to tell to the panel or -- I assume that happened here.

12 Q. So his part started around page 38, I
13 think.

14 A. Yeah, I'm getting close.

15 Q. 38, 39 I guess is where...

16 A. Okay. 38, 39.

17 MR. CRANE: Right. Page 38, around line 9.

18 A. Yeah, I got it. So anything -- that's
19 normally the question I ask.

20 BY MS. JONES:

21 Q. Okay. Was he -- do you-all normally allow
22 the inmate to speak as long as they want?

23 A. Normally we let them speak as long as they
24 want. Sometimes they have a -- they'll have a --
25 they'll actually write out a list of their goals and

1 things and -- once they're released. And sometimes if
2 they're too lengthy, we ask them to just kind of
3 capsulize (sic) it. Due to the time frame, you know.

4 Q. And how much time do they typically speak,
5 if you can estimate?

6 A. Most of them don't speak too often. I
7 don't remember how long he did, but not too long. I
8 don't know. That's hard to gauge. Some of them
9 speak -- have a couple lines, or some of them might
10 speak for over five minutes.

11 Q. Okay.

12 A. You know, it's not much more than that.

13 Q. It's not a situation where you're having to
14 cut them off, right?

15 A. No. The only time I've ever cut off
16 anybody is if they've got a lengthy thing. Maybe it's
17 something this long they want to read.

18 Q. Yeah, uh-huh.

19 A. And due to the interest of time, we just
20 don't have the time. We take it. You know, get a copy
21 of it or take it from them. But normally we let them
22 speak within reason as long as they want to.

23 Q. So you'll note that after he finished his
24 statement, you-all didn't ask him any questions about
25 his statement. I understand that you interviewed him

1 before he made his final statement.

2 Is it typical that you-all don't ask
3 questions after they make their final statement?

4 A. Is it typical? I'd say probably so.
5 'Cause I always ask them, is there anything else?

6 Q. Uh-huh.

7 A. And they've had their say. And we listen
8 to what they have to say. And we don't -- your
9 question was we don't ask any questions after they've
10 made their statement?

11 Q. About their statement, right. So --

12 A. Normally, we don't. That would be a fair
13 answer.

14 Q. Mr. [REDACTED] presented a home plan. And had
15 the support and family -- of his family and fiancée.
16 And he also had a job internship at a dry cleaners that
17 was --

18 A. Is that in the transcript here?

19 Q. I have these letters. Well, it may be in
20 the prehearing report as well, but I also have --

21 A. Oh, I got it. Yeah. I have it in front of
22 me. I didn't remember it till I'm looking at it now.

23 MS. JONES: Let's mark AGO002476 as
24 Exhibit 10, which is the letter regarding the
25 internship at the dry cleaners.

1 (Deposition Exhibit No. 10 was marked for
2 identification.)

3 BY MS. JONES:

4 Q. Do you recall reviewing that --

5 A. No, ma'am.

6 Q. -- in his file?

7 A. I don't know that it was in the file. It
8 could have been. Sometimes these things show up later
9 in the files.

10 MS. JONES:

11 And I'm going to mark as
12 Exhibit 11, AGO002479 through 81, which is a letter from
13 his fiancée, [REDACTED].

14 (Deposition Exhibit No. 11 was marked for
15 identification.)

16 BY MS. JONES:

17 Q. Do you recall seeing that document?

18 A. If it was in the file, I'm sure I probably
19 saw it or read it, both. But I don't recall today
20 seeing the letter.

21 Q. What did you think --

22 A. I don't recall seeing the letter, but, you
23 know.

24 Q. What did you think of the home plan that
25 was presented -- was included, that letter representing

1 he had an internship and that --

2 A. I thought it was good plan, if I remember
3 right.

4 Q. Okay.

5 A. I didn't have a problem with it. I thought
6 it was okay. At least he had a plan, a home plan. A
7 lot of them come before us and don't, you know. And he
8 had one in place.

9 Q. So does the home plan factor into any kind
10 of risk analysis you do for these individuals?

11 A. Speaking about me generally?

12 Q. Yes.

13 A. Sure. They have a good home plan.

14 Q. Okay.

15 A. That somebody out there is supporting them.

16 Q. So does that lower their risk of release?

17 A. In my opinion it would.

18 MR. SPILLANE: I'm going to ask --

19 THE WITNESS: Lower their risk --

20 MR. SPILLANE: -- did you ask, does it
21 lower their risk? And I don't know what that means.

22 BY MS. JONES:

23 Q. Lower their risk -- you know, so you
24 said low- -- earlier when you were testifying, you said
25 it's all about risk and managing risk, correct?

1 **A. Uh-huh.**

2 **Q. And that --**

3 **A. Would that lower -- make their -- go ahead.**

4 **I'm sorry.**

5 **Q. Yeah. And so does having a good home plan**
6 **lower their risk, I guess, of re-offending --**

7 **A. It's to their advantage. I'll put it that**
8 **way.**

9 **Q. Okay.**

10 **A. They have a home -- 'cause some do not have**
11 **home plans.**

12 **But I don't recall the letters. I**
13 **probably -- if I they were in the file, I read them.**

14 **Q. Uh-huh.**

15 **A. I looked over them at least, at the very**
16 **lease and -- to see if they had support. And I don't**
17 **recall --**

18 **Q. Is that --**

19 **A. If they were there, they were there.**

20 **Q. Is that something that you would point out**
21 **to the other panel members?**

22 **A. Yes.**

23 **Q. That --**

24 **A. That the letters were in the file.**

25 **Q. Do you recall any debate or discussion**

1 about Mr. [REDACTED] after the hearing concluded? You're
2 saying that you-all -- that the panel talks a little
3 bit about the hearing after --

4 A. Once the recording was shut off?

5 Q. Yes.

6 A. I'm sure we talked about it. I can't tell
7 you in detail what was discussed. I know we talked
8 about it.

9 Q. Do you know after you-all -- after that
10 day, and those files are put into the next voting
11 member's shelf, did you share anything, any
12 observations about Mr. [REDACTED]

13 A. No. I don't remember that very well.

14 Q. So is it typical for you-all to have
15 statements or discussions after the recording is off?

16 A. Well, to my knowledge, it's always shut off
17 as soon as the offender leaves the room.

18 Q. Okay.

19 A. I mean, I guess it could be left on
20 accidentally.

21 Q. Okay.

22 A. Normally, it's shut off when the offender
23 leaves the room.

24 Q. Are there any notes or anything that
25 you-all take during that part?

1 **A. As I told you earlier, any notes that I**
2 **took probably would have been wadded up and put in the**
3 **waste can. I can't say --**

4 Q. But during -- during your deliberations?

5 **A. Rephrase that, please.**

6 Q. During your deliberations or at that
7 time -- like, after the hearing has concluded and the
8 panel members are taking, do you take any notes?

9 **A. While we're talking about it? I don't**
10 **recall any being taken. There could have been.**

11 Q. So you'll note that on Exhibit 8, which is
12 the parole hearing report, the last page --

13 **A. The prehearing --**

14 Q. Yeah, that one, the last page.

15 **A. Yes, ma'am.**

16 Q. The last paragraph, it says "due to his
17 attitude regarding the offense and the victim, she
18 recommends he be rescheduled for rehearing in 2021."

19 **A. This is a recommendation from the field.**

20 Q. Correct. How much weight did you give this
21 recommendation?

22 **A. Obviously I took it into consideration.**
23 **That was the final determination.**

24 Q. In the paragraph --

25 **A. I gave it some weight. I can't give you a**

1 **number, you know.**

2 Q. In the paragraph above that, you'll note
3 that she writes in the second line, "he takes no
4 responsibility for the present offense and shows no
5 remorse."

6 **A. I see that. Yes, ma'am.**

7 Q. Do you read that to be -- using the fact
8 that he's maintaining his innocence as being used
9 against him?

10 **A. I don't -- he shows no remorse?**

11 Q. "He takes no responsibility for the present
12 offense and shows no remorse."

13 **A. No.**

14 Q. "He never talks about the victim and only
15 talks about what he was going to do if released."

16 So your takeaway from that is his
17 maintaining --

18 **A. I did not hold it against the offender, if
19 that's what you're asking me. What her statement was.**

20 Q. So Exhibit 4, which was the board action
21 sheet that we were looking at earlier, that was the one
22 for Mr. [REDACTED]. And you wrote -- we talked about this
23 a little bit already, but your comment was good --
24 not -- "conduct not good," correct?

25 **A. Uh-huh. That's my writing -- printing,**

1 **yes.**

2 Q. And, again, what are you basing that on?
3 That that assault that he was --

4 A. I think he had -- can I look back through
5 these documents?

6 Q. Yes.

7 A. I think he had 24-some --

8 Q. Okay.

9 A. -- conduct violations up until 2012. And
10 the last one was the introduction of control substance
11 into the institution. That's my assessment. I mean,
12 if the other parole members don't want to go along with
13 it, that's their prerogative. I just didn't feel like
14 his conduct was good.

15 Q. You'll note in the transcript at page 24,
16 you state, "you've done pretty good as far as conducted
17 violations since 2012."

18 A. Correct.

19 Q. Okay.

20 A. I think I just mentioned that.

21 Q. Okay. Yes.

22 A. What page was that?

23 Q. 24, line 20.

24 A. Uh-huh.

25 Q. And he's been incarcerated for 30 years, as

1 of the time of the parole hearing, correct?

2 A. Yes, ma'am. Approximately.

3 Q. Okay. So he had less than one violation a
4 year, if my math is correct, right?

5 A. From what time to what time?

6 Q. The entire time that he's been
7 incarcerated, he's had 24 violations.

8 A. Correct. I don't remember the seriousness
9 of all of them, but, you know, it sounds right.

10 Q. Is there any period of time that could
11 elapse for Mr. [REDACTED] where you would change that
12 assessment, that his conduct was not good?

13 A. Probably five or six years. Five years.
14 Like I said, we have people in prison that's been there
15 for 30 years and have not had one conduct violation.

16 Q. How common is that?

17 A. They've abided by the rules and
18 regulations.

19 Q. But I mean, how common is that?

20 A. How common is it? I can't put a number on
21 that. But there's people in prison that's been there
22 for 20 to 30 years without conduct violations.

23 Q. Are we talking half of the individuals?

24 A. No. Maybe -- I'm just guessing.

25 Q. Okay.

1 **A. Ten, fifteen percent. I don't know.**

2 Q. Okay. Is an average of one violation a
3 year a lot?

4 **A. An average of one violation a year. I**
5 **guess -- how do you determine a lot? What the**
6 **definition of a lot is.**

7 Q. So when you say another five or -- you
8 know, five or six years that he wouldn't get this label
9 of conduct not good, so like a total of ten years of
10 having no violations?

11 **A. Say that again, please.**

12 Q. So before I was asking you, is there a
13 period of time that could elapse that his conduct would
14 no longer be labeled as not good? And you said, like,
15 five or six years. You mean -- so that would be a
16 total of 10 or 11 years it would take, in order to get
17 a different label of his conduct?

18 **A. I don't know. Every case is different,**
19 **ma'am. I don't know if I have a number to give you on**
20 **that. You know what I mean?**

21 Q. Yeah, and I guess --

22 **A. It depends upon the seriousness of the**
23 **conduct violations.**

24 Q. Uh-huh.

25 **A. There's multiple factors involved in all**

1 this, in all of this scenario and situation. You know,
2 what I consider not being good conduct, as I put,
3 "conduct not good." The other parole board members may
4 think just the opposite and give a different date. I
5 don't -- you know -- what goes on in the mind of men.

6 MS. JONES: I'm going to mark Exhibit 12,
7 which is AGO002444 to 4445.

8 (Deposition Exhibit No. 12 was marked for
9 identification.)

10 BY MS. JONES:

11 Q. Have you seen these forms before?

12 A. I've seen them in files before.

13 Q. And you'll note that it says, "the reasons
14 for denial is that circumstances surrounding the
15 present offense and poor institutional adjustment."

16 A. Where is that at?

17 Q. On the first page in the bottom where
18 there's lines.

19 A. Okay. Which is what was checked on the
20 back sheet of the parole board --

21 Q. Yes.

22 A. -- action sheet.

23 Yes, I see that.

24 Q. What does "circumstances surrounding the
25 present offense" mean, as it relates to Mr. [REDACTED]?

1 **A. The actual crime, murder, I would say.**

2 Q. Okay. So is that always a reason given for
3 people convicted of murder?

4 **A. Not always. But I imagine it shows up**
5 **quite often. Violent behavior, violent offense, any**
6 **time you take somebody's life.**

7 Q. Is there a way in which that won't appear
8 for -- going forward? So, like -- I mean, is there any
9 way for him to overcome that? The circumstances
10 surrounding the present offense?

11 **A. My opinion?**

12 Q. Uh-huh.

13 **A. Probably if it's a violent hideous crime,**
14 **probably not.**

15 Q. And you --

16 **A. But I don't particularly agree with the**
17 **asterisk about there does not appear to be a reasonable**
18 **probably that -- at this time that you would live and**
19 **remain --**

20 COURT REPORTER: You need to slow down.
21 You're reading to yourself.

22 (Whereupon, the last answer was read back
23 by the reporter.)

24 THE WITNESS: I don't particularly agree
25 with the circumstances surrounding the present offense.

1 There's an asterisk that says, "there does not appear
2 to be a reasonable probability at this time that you
3 would live and remain at liberty without again
4 violating the law based on."

5 That might not necessarily be true in my
6 opinion.

7 BY MS. JONES:

8 Q. Sir, do you remember earlier when we were
9 talking about what Miller stands for? And that Miller,
10 the court -- the U.S. Supreme Court in Miller said
11 that, you know, life without parole will be reserved
12 for those individuals whose crimes reflect permanent
13 incurrigibility, that that's going to be a rare
14 occurrence?

15 **A. (No response.)**

16 Q. Let me restate or do that again?

17 We were talking about the Miller versus
18 Alabama case, the United States Supreme Court that
19 sparked Senate Bill 590, and we were talking about what
20 it stood for. And the Court, in that opinion, wrote
21 "only the rarest juvenile offenders, those whose crimes
22 reflect permanent incurrigibility, are eligible for
23 life without parole."

24 Do you remember speaking about that
25 earlier?

1 **A. Uh-huh.**

2 Q. And that that would be -- you understood
3 that to mean that it would be rare that juveniles would
4 be eligible for life without parole?

5 **A. Yes.**

6 Q. All right. So now we're talking about --
7 on this form where -- for the reasons why he was
8 denied, it says, "circumstances surrounding the present
9 offense." And you stated, oh, well, because it's a
10 violent crime, that's probably going to be the reason
11 given. But does it make a difference that it was a
12 juvenile that committed that crime, as opposed to an
13 adult?

14 **A. My personal opinion?**

15 Q. Uh-huh.

16 **A. Yeah, it does.**

17 Q. Okay.

18 **A. Yes.**

19 Q. So is there any way for these individuals
20 to overcome that, as being a reason for denial for
21 parole?

22 **A. My personal opinion?**

23 Q. Yes.

24 **A. Probably not the way that it's stated.**

25 **It's seriousness of the present offense. At this time**

1 it would depreciate the seriousness of the present
2 offense. Because the offense is the offense. I mean,
3 you can't change it.

4 But I don't know that every crime of this
5 magnitude -- I don't know if that was always on there
6 like that.

7 Q. Okay.

8 A. I guess it is. I don't know that for a
9 fact.

10 Q. It also states poor institutional
11 adjustment.

12 A. Yes, ma'am.

13 Q. What does that mean as it relates to Mr.
14 [REDACTED]?

15 A. The conduct violations. Generally
16 speaking.

17 Q. How is it that he was given -- or, like,
18 what led to a rehearing date of five years, December of
19 2021?

20 A. That was the decision of the panel at that
21 time. And I can't tell you exactly what words were --
22 the discussion was word for word or at all. I don't
23 remember for sure.

24 Q. Okay. So I want to just spend a little
25 time talking about a few of the Miller factors and get

1 an understanding of what evidence or information that
2 you consider in evaluating those factors?

3 **A. Yes, ma'am.**

4 Q. The first one being the substantive growth
5 and increased maturity of the person since the offense
6 occurred.

7 What did you consider for that?

8 **A. Talking to him one-on-one, first of all.**
9 **You can tell -- really kind of tell how somebody has**
10 **matured in life. And under these -- and then also --**
11 **can I read through this?**

12 Q. Yeah. What are you pointing to?

13 **A. (Indicating.)**

14 Q. Okay.

15 **A. I would say this occurred during the**
16 **hearing.**

17 Q. And for the record, you're talking about
18 the --

19 **A. Exhibit 1. No. 2. Works as a wheelchair**
20 **pusher. Conduct improved. No CDOs since 2012 -- CDEs,**
21 **excuses me.**

22 Q. So that factor was a positive factor for
23 him?

24 **A. I'm sorry?**

25 Q. So that --

1 **A. Yes, ma'am.**

2 Q. That was a positive for him?

3 **A. Yes, ma'am.**

4 Q. Okay. The defendant's age and maturity,
5 intellectual capacity, mental and emotional health and
6 development at the time of the offense.

7 **A. That's where?**

8 Q. Well, that's one of the factors of 590.

9 **A. The nine other issues that you brought up.**

10 Q. Well, yeah. There's actually ten but, yes.

11 **A. And your question is?**

12 Q. What evidence did you consider in
13 evaluating that factor?

14 **A. And which factor again?**

15 Q. The defendant's age, maturity, intellectual
16 capacity and mental and emotional health and
17 development at the time of the offense.

18 **A. By interviewing him.**

19 Q. What did you get from him?

20 **A. Well, I don't remember all the details of**
21 **that particular portion. So, you know...**

22 Q. So what you're saying is what you got is
23 reflected in the transcript?

24 **A. What I got, I extracted from him**
25 **personally, out of my feelings about those particular**

1 **issues.**

2 Q. Is there anything else you considered in
3 evaluating that factor?

4 A. **Not that I can remember.**

5 Q. The defendant's background, including his
6 or her family, home, and community environment.

7 What did you consider in evaluating that
8 factor?

9 A. **If I remember right -- it's been a long**
10 **time ago when we talked to him about his background,**
11 **his family problems, and issues. That was discussed.**
12 **I don't -- I don't remember for sure, you know, exactly**
13 **what was said.**

14 Q. So you believe it would have been reflected
15 on the transcript, whatever you went over?

16 A. **I think it was at one point. There were --**
17 **I brought up about the part -- sexual abuse, et cetera,**
18 **was not a defense for --**

19 Q. Well, that wasn't discussed, right? That
20 was just something that was read.

21 A. **I don't remember.**

22 Q. Okay.

23 A. **It was -- it's been a long time ago.**

24 Q. The next factor is the affect of familial
25 pressure or peer pressure on the defendant's actions.

1 What did you consider for that factor?

2 **A. I don't remember.**

3 Q. The affect of characteristics attributable
4 to defendant's youth on the defendant's judgment.

5 What did you consider for that factor.

6 **A. I don't remember that either.**

7 Q. Do you believe that you had the tools,
8 however, to analyze each of those factors we just went
9 over?

10 **A. I'm sorry?**

11 Q. Do you believe that you had the tools,
12 meaning the qualifications and the training, in order
13 to analyze those factors?

14 **A. Me personally?**

15 Q. Yes.

16 **A. Yes.**

17 Q. And what did you base that on?

18 **A. On lots of interviews I've done and my
19 education. And my overall -- all throughout my life
20 I've been involved in law enforcement. And talked to a
21 lot of people in my life.**

22 **(Deposition Exhibit No. 13 was marked for
23 identification.)**

24 BY MS. JONES:

25 Q. Does Exhibit 13, which is your resume,

1 which is AGO94 through 95 -- and just for the record,
2 when you talk about your education as being one of the
3 things that qualifies you to do these analyses of these
4 590 factors, your education, as you testified, and
5 what's reflected on your resume, is what? Criminal
6 justice?

7 **A. Administration.**

8 Q. Uh-huh.

9 **A. That's what it should be. A Bachelor of**
10 **Science in criminal justice administration and Bachelor**
11 **of Science, criminal justice administration.**

12 Q. Uh-huh. And that's the education that you
13 were referring to as qualifying you to do a 590
14 analysis?

15 **A. Some of it, yes, ma'am.**

16 Q. Well, when you say your education --

17 **A. Formal education. Formal education.**

18 Q. Okay. So what informal education did you
19 have?

20 **A. Life itself. My experiences in life and**
21 **dealing with law enforcement.**

22 Q. Did you have experiences with juveniles?

23 **A. Yes, ma'am.**

24 Q. In what context?

25 **A. A lot of different arrests of juveniles,**

1 **when I was on the patrol, in my career. Lots of them.**
2 **Lots of them I took home as a matter of fact. But**
3 **anyhow, that's beside the point.**

4 Q. Okay. So when you were -- your arresting
5 of juveniles, you're saying, helps qualify you to
6 interview and do some analysis of psychological
7 childhood issues?

8 A. Yes. I've talked to juveniles and put them
9 under arrest. And other situations where I've talked
10 to them in-depth about what was -- in-depth about
11 what's going on in this particular crime. And actually
12 been around their families.

13 MS. JONES: I think I am about done. I
14 want to step out and make sure.

15 (A break was taken.)

16 BY MS. JONES:

17 Q. So you were testifying earlier that you
18 didn't recall how many juvenile life without parole
19 hearings you were involved in.

20 Do you recall that you have voted on all of
21 the parole proceedings for each of the named defendants
22 in this case?

23 A. No, I don't.

24 Q. So do you recall voting on the parole of
25 Norman Brown?

1 A. I think I did.

2 We see so many cases, ma'am.

3 Q. Yeah, that's fair enough.

4 A. I'm sure -- I'm not -- I'm not hundred --
5 I'm sure I did.

6 Q. Do you recall voting on Theron Roland?

7 A. I don't -- I don't recall that.

8 Q. Do you recall voting on Sidney Roberts?

9 A. I don't recall that.

10 Q. Do you remember anything about Norman
11 Brown? It seems like you have a little bit of a --

12 A. I remember the crime --

13 Q. Okay.

14 A. -- that was committed. He was shot and
15 killed, the victim. I can't recall his name. Starts
16 with an H. And that his wife was seriously injured.

17 Q. Have you reviewed any of their parole files
18 since this lawsuit was filed?

19 A. No. Other than this one that I brought
20 with me.

21 Q. Which was Norman Brown?

22 A. For some reason I was thinking it was about
23 this.

24 Q. Okay.

25 A. And it was [REDACTED]. I just looked over it

1 **yesterday. Glanced over it.**

2 Q. So you glanced over [REDACTED]

3 **A. No. [REDACTED]**

4 Q. Over Brown. Okay.

5 MS. JONES: Okay. No further questions.

6 CROSS-EXAMINATION

7 QUESTIONS BY MR. SPILLANE:

8 Q. All right. I'm Mike Spillane. I have a
9 few questions.

10 You testified that at the board meeting in
11 May of 2017, you seconded the motion to raise the cap
12 for serious offenders at high level institutions, the
13 number of hearings to 15 and at lower level
14 institutions to 18; is that accurate?

15 **A. Yes, sir.**

16 Q. Are the gentleman involved in JL WOP, to
17 your knowledge, at high level institutions?

18 **A. Would you say that again, please.**

19 Q. Are they confined in high level
20 institutions that would be under the 15 cap, as opposed
21 to the 18 cap?

22 **A. I think so.**

23 Q. Earlier you testified about the average, if
24 I remember correctly, the number of hearings that you
25 do being 6 to 12; is that accurate?

1 **A. No. Twelve -- well, yeah, 6 to 12. I**
2 **figured around 12.**

3 Q. And also I think you were asked a question
4 as if you had ever done, I think, 18 in a day. And you
5 said -- I think you said that that was rare. Tell me
6 how rare it is?

7 **A. Very rare. Now, since I've been there.**
8 **'Cause they've cut -- you know, they've cut back.**
9 **They've capped them 1 at 18, but we don't -- we rarely**
10 **hear 18.**

11 Q. Now, when you hear 18, I'm assuming that's
12 at a low level institution, because that's the cap?

13 **A. Normally. Since that took effect.**

14 Q. When you're at a high level institution,
15 such as the one that has the caps of 15, like where
16 these JL WOPs you think may be, do -- where does that
17 fall on your average of 6 to 12 hearings? Is that at
18 the low end?

19 **A. I think that would be at the high end**
20 **maybe. It's a 12. Maybe I misunderstood your**
21 **question.**

22 Q. I didn't ask a very good question.

23 You said your average is 6 to 12. Is
24 that --

25 **A. That was my guess at the time I was asked.**

1 Q. And that's the average of all the hearings
2 you do?

3 A. Yes, 6 to 12. Now.

4 Q. A day. And is it different if you're at a
5 high level institution than a low level institution, or
6 is that the average for everything?

7 A. That's probably the average now. Eighteen
8 is what we capped it at. Eighteen and fifteen, if I
9 remember right. But that doesn't necessarily mean that
10 follows through to be. Does that makes sense?

11 Q. Okay.

12 A. 'Cause sometimes we've gone over both those
13 numbers for logistical reasons.

14 Q. Okay. I guess I'm going to try this one
15 more time.

16 A. Sorry.

17 Q. Is there a difference in the average number
18 of hearings that you do when you're at a high level
19 institution as opposed to when you're at a low level
20 institution?

21 A. No.

22 Q. All the same?

23 A. Pretty much.

24 Q. Good enough.

25 You talked about the board action sheet,

1 and you showed us the board action sheet. And you also
2 showed us the second page, where you have really two
3 boxes to check. One of which is circumstances of the
4 offense -- I mean one of which is the seriousness and
5 circumstances of the offense; and the other one is that
6 they can't live and remain at liberty. And then you
7 have subcategories.

8 Are those the only -- those two main
9 categories, one and two, is that all you have the
10 option of --

11 **A. No.**

12 Q. -- checking?

13 **A. No. We have the option of checking one of**
14 **those boxes.**

15 Q. Well, I'm guessing I'm not making myself
16 clear again.

17 There are only -- number one is "release at
18 this time would depreciate the seriousness of the
19 present offense."

20 **A. Correct.**

21 Q. And that's one. And then you have A
22 through G under that?

23 **A. Correct.**

24 Q. And then two you have "reasonable
25 probability that the offender at this time would live

1 and remain at liberty." And you have A through K under
2 that.

3 But all of your options are in one and two;
4 is that accurate?

5 **A. Correct.**

6 Q. Do one and two represent an exclusive or an
7 inclusive thing of everything you considered in the
8 parole process?

9 **A. I would say yes.**

10 Q. So let me --

11 **A. For the most part.**

12 Q. For the most part?

13 **A. Uh-huh.**

14 Q. So you feel like all of the factors that
15 you talked about, you consider under Miller, can be fit
16 within one or two? And whatever you say is fine. I
17 just want to know the answer.

18 **A. Yes.**

19 Q. Okay. But you still think about all those
20 factors. You just put them into one or two?

21 **A. Yes.**

22 Q. Okay. Fair enough.

23 When you're talking about your review of
24 JL WOP cases, as I understood your testimony, you said
25 you read every piece of paper in the parole file of one

1 that you're reviewing; is that accurate?

2 **A. On the juvenile ones?**

3 Q. Yes, sir.

4 **A. At some point in time, yeah.**

5 Q. I mean, when you're reviewing it before you
6 do an initial vote, after someone that -- someone else
7 handled the hearing, you read every piece of paper in
8 the file?

9 **A. Well, on that particular day at the**
10 **hearing.**

11 Q. Okay. Again, I'm not asking a good
12 question.

13 **A. Well, maybe it's just me not comprehending.**

14 Q. Well, first of all, let's ask about the
15 hearing. If you do the hearing -- if you're the
16 hearing officer that's running that, do you read every
17 piece of paper in the file?

18 **A. For the most part, yes. I wouldn't say a**
19 **hundred percent. Nothing's a hundred percent.**

20 Q. Is it your intention to read every piece of
21 paper?

22 **A. It is.**

23 Q. And let's go through the cases where you're
24 reviewing a JL WOP where someone else has handled the
25 hearing. Do you read every piece of paper in that

1 file?

2 A. Not always.

3 Q. Tell me what you don't read and why?

4 A. Well, it could be the sentence and judgment
5 from the Court. As I indicated earlier, if
6 there's a -- if there's a restitution involved. Some
7 documents I don't -- do not read all of them. There's
8 numerous documents in those file.

9 Q. Do you always read the prehearing report --

10 A. Yes.

11 Q. -- in every case?

12 A. Yes.

13 Q. If there's victim information, saying this
14 guy should be let go for reason X, Y, and Z, do you
15 always read that?

16 A. Yes.

17 Q. If there's information from the prosecutor
18 saying he shouldn't be let go for reason X, Y, and Z,
19 do you always read that?

20 A. If it's in the report, I read it. Whether
21 they oppose. But that very seldom happens in the
22 prosecutor's prehearing notes.

23 Q. Well, not just --

24 A. Revocations.

25 Q. Not just the prehearing report. But if

1 there's separate victim information in the file that's
2 separate from the prehearing report, do you read that?

3 **A. Yes.**

4 Q. And if there's separate information from
5 the prosecutor, do you read that?

6 **A. Yes.**

7 Q. Okay. You were asked a lot of questions
8 about the transcript from the [REDACTED] hearing this
9 morning. When was the -- was this the first time you
10 saw it since you conducted the hearing?

11 **A. Yes. To my knowledge, that's the first**
12 **time I've seen it.**

13 Q. Do you have a firm recollection of the
14 things you said at the hearing and why you said them?

15 **A. Not a firm recollection, no.**

16 Q. Okay.

17 **A. That was a long time ago.**

18 Q. Okay. I heard you testify on direct, as I
19 understood it, that one of Mr. [REDACTED] conduct
20 violations was introducing drugs into an institution;
21 is that correct?

22 **A. Correct.**

23 Q. Is that a very serious conduct violation?

24 **A. That is considered a major offense.**

25 Q. Why?

1 **A. Conduct. Obviously bringing drugs into an**
2 **institution, where they're not allowed.**

3 Q. I also noticed that you talked about, he
4 caused serious injury to another -- I don't know if you
5 used these words, but he caused serious injury to
6 another inmate by stabbing him. Is that serious?

7 **A. That's considered a serious violation, yes.**

8 Q. Okay. And also, I think on multiple
9 occasions, if I read the report correctly, he had
10 violations for carrying weapons. Is that a serious
11 violation?

12 **A. I don't recall that particular violation,**
13 **but it is a serious violation.**

14 Q. Is that something you think about in your
15 calculation of whether or not someone's aggressive or
16 whether or not someone is --

17 **A. Sure.**

18 Q. -- has bad conduct?

19 **A. Bad conduct, yeah, sure. If you're**
20 **aggressive.**

21 Q. So it isn't just the number of conduct
22 violations. It's the type?

23 **A. The seriousness of them, too.**

24 Q. Okay. Have some of the offenders that have
25 been sentenced to JL WOP and then become parole

1 eligible under 55884 -- 558047 and had parole hearings,
2 been given release dates?

3 **A. Yes. Let me clarify that. 5558 is --**

4 Q. 558047 is part of Senate Bill 590.

5 **A. Okay. Take that back.**

6 **What was your question?**

7 Q. Have some of them -- although, I'm not
8 asking if they've been released yet, but have they been
9 given dates for release?

10 **A. I'm sure that at least -- I feel sure. I**
11 **don't know for a fact, but I think there's one I know.**
12 **And maybe more than one.**

13 Q. All right.

14 **A. But I don't know the number.**

15 Q. Very good.

16 Let me ask you about the circumstances of
17 the offense. You indicated that an offense is serious
18 and it's not going to become less serious over time.
19 But all of these gentleman that are in -- that are
20 under a JL WOP sentence and then become parole
21 eligible, they've all committed murder, haven't they?

22 **A. Correct. Been convicted of murder.**

23 Q. And some of them are released even though
24 the offense is very serious?

25 **A. Correct.**

1 Q. So the fact that you find that release at
2 this time would depreciate the seriousness of the
3 offense, that doesn't mean that they couldn't be
4 released at some future date; is that correct?

5 A. **That's correct.**

6 Q. All right.

7 A. I think 5 -- you said 559? It's my
8 understanding from reading it and under- -- taking --
9 digesting it all, that they are allowed to have a
10 parole hearing as juvenile offenders. Just like
11 anybody else.

12 Q. Very good.

13 Now, when the -- and I don't know if you
14 remember this, but do you remember the delegate at Mr.
15 ██████████ parole hearing talking about his abuse and
16 his life at home before his crime?

17 A. **I don't remember it.**

18 Q. If the delegate had talked about that, is
19 that something you would have listened to and
20 considered in your decision?

21 A. **Sure.**

22 Q. If that was mentioned in the parole report,
23 is that something you would have read and considered in
24 your decision?

25 A. **Yes. I indicated that previously.**

1 Q. Okay. You mentioned a little bit that you
2 had been involved with juveniles while you were on the
3 Highway Patrol. And you said something that stood out
4 to me. You said sometimes you would take them home.

5 What did that mean?

6 A. That means just what I said. They'd be in
7 trouble. And rather than incarcerate them or put them
8 in the juvenile system, I would take them home and turn
9 them over to their parents, and tell them what they did
10 was wrong. And hopefully it didn't happen again. That
11 occasion had arisen several times.

12 MR. SPILLANE: Thank you.

13 That's all I have.

14 MS. JONES: Nothing further.

15 THE WITNESS: Okay. Thank you.

16 MR. CRANE: Now, you have the choice to
17 reserve the right to read over the deposition
18 transcript and correct any typographical errors if
19 you'd like, or you can waive signature on that and just
20 trust the court reporter.

21 THE WITNESS: Okay.

22 MR. CRANE: What would you like to do?

23 THE WITNESS: Yeah, I'd like to read it
24 over.

25

1 CERTIFICATE OF REPORTER

2 I, Kim D. Murphy, Certified Court Reporter,
3 for the State of Missouri, do hereby certify that the
4 witness whose testimony appears in the foregoing
5 deposition was duly sworn by me; that the testimony of
6 said witness was taken by me to the best of my ability
7 and thereafter reduced to typewriting under my
8 direction; that I am neither counsel for, related to,
9 nor employed by any of the parties to the action in
10 which this deposition was taken, and further that I am
11 not a relative or employee of any attorney or counsel
12 employed by the parties thereto, nor financially or
13 otherwise interested in the outcome of the action.

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18 _____
19 Kim D. Murphy, CCR
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